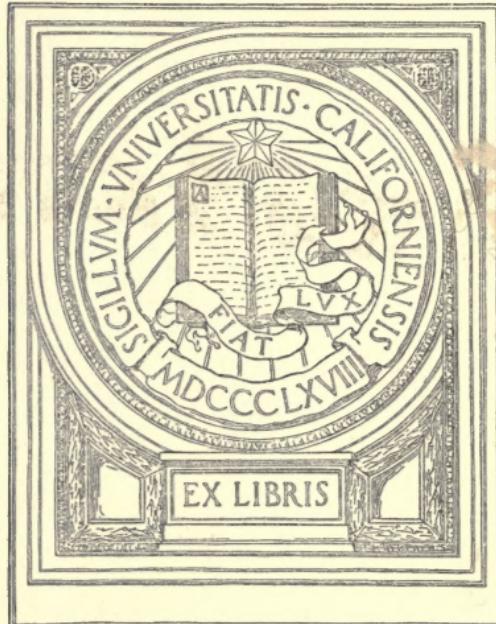




UNIVERSITY OF CALIFORNIA
AT LOS ANGELES







SOUTH DAKOTA CONSTITUTIONAL CONVENTION

"HELD AT SIOUX FALLS, JULY, 1889

VOL. 2

HON. A. J. EDGERTON, President

REV. F. A. BURDICK, Chief Clerk

DR. A. W. HYDE, Engrossing Clerk

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Constitutional Convention of 1889

The Convention of 1889, which convened at Sioux Falls on July 4, was the third Constitutional Convention held in South Dakota. Volume One, of this series, embraces the debates of the second Constitutional Convention of 1885. The debates of the Convention of 1883 were not preserved. The membership of the Convention of 1889 was as follows:

FIRST DISTRICT—Sanford Parker, of Fall River; Valentine T. McGillicuddy, of Pennington; Chauncey L. Wood, of Pennington.

SECOND DISTRICT—Dighton Corson, of Lawrence; William S. O'Brien, of Lawrence; Charles M. Thomas, of Lawrence.

THIRD DISTRICT—S. A. Wheeler of Butte; Thomas W. Thompson, of Lawrence; John Scollard, of Lawrence.

FOURTH DISTRICT—William McCustick, of Roberts; Henry Neill, of Grant; C. R. Wescott, of Deuel.

FIFTH DISTRICT—William Cook, of Marshall; W. G. Dickinson, of Day; George H. Culver, Day;

SIXTH DISTRICT—Martin R. Henninger, of Brown; Lyman T. Boucher, of McPherson; Harry T. Craig, of Campbell.

SEVENTH DISTRICT—S. F. Brott, of Brown; William Stoddard, of Brown; M. P. Stroupe, of Brown.

EIGHTH DISTRICT—H. A. Humphrey, of Faulk; J. G. Davies, of Edmunds; Peter Couchman, of Walworth.

NINTH DISTRICT—J. F. Wood, of Spink; Thomas Sterling, of Spink; T. W. P. Lee, of Spink.

TENTH DISTRICT—John F. Whitlock, of Potter; David Hall, of Sully; Chas. H. Price, of Hyde.

ELEVENTH DISTRICT—C. G. Hartley, of Hand; S. F. Huntley, of Jerauld; R. C. Anderson, of Buffalo.

TWELFTH DISTRICT—A. G. Kellam, of Brule; J. V. Willis, of Aurora; H. F. Fellows, of Aurora.

THIRTEENTH DISTRICT—C. H. Van Tassel, of Sanborn; L. H. Hole, of Beadle; George C. Cooper, of Beadle.

FOURTEENTH DISTRICT—Carl G. Sherwood, of Clark; W. H. Matson, of Kingsbury; S. D. Jeffries, of Clark.

FIFTEENTH DISTRICT—E. E. Clough, of Codington; S. S. Peck, of Hamlin; S. B. Van Buskirk, of Codington.

SIXTEENTH DISTRICT—I. Atkinson, of Brookings; I. R. Spooner, of Kingsbury; Joshua Downing, of Brookings.

SEVENTEENTH DISTRICT—H. W. Eddy, of Miner; F. G. Young, of Lake; R. F. Lyons, of Lake.

EIGHTEENTH DISTRICT—Andrew J. Berdahl, of Minnehaha; H. M. Williamson, of Moody; C. C. Gifford, of Minnehaha.

NINETEENTH DISTRICT—William Van Eps, of Minnehaha; Clark G. Coats, of Minnehaha; E. W. Caldwell, of Minnehaha.

TWENTIETH DISTRICT—William Elliott, of Turner; A. B. McFarland, of Lincoln; J. A. Fowles, of Lincoln.

TWENTY-FIRST DISTRICT—John L. Lolley, of Clay; A. O. Ringsrud, of Union; J. Kimball, of Union.

TWENTY-SECOND DISTRICT—Edward G. Edgerton, of Yankton; Christian Buechler, of Hutchinson; C. J. B. Harris, of Yankton.

TWENTY-THIRD DISTRICT—William T. Williams, of Bon Homme; Robert A. Smith, of Charles Mix; Joseph Zitka, of Bon Homme.

TWENTY-FOURTH DISTRICT—A. J. Edgerton, of Davison; Charles A. Houlton, of Douglas; S. A. Ramsey, of Sanborn.

TWENTY-FIFTH DISTRICT—W. H. Goddard, of McCook; W. H. Murphy, of Hanson; T. F. Diefendorf, of McCook.

SOUTH DAKOTA CONSTITUTIONAL CONVENTION.

Sioux Falls, D. T., July 4th, A. D., 1889.

At the hour of twelve o'clock, meridian, on this 4th day of July, 1889, the day and hour appointed by law, the members-elect of the Constitutional Convention of South Dakota, assembled in Germania Hall and were called to order by Hon. Dighton Corson, of Lawrence, one of their number.

Mr. Corson, of Lawrence: Gentlemen of the Constitutional Convention of South Dakota: The Act of Congress providing for this Convention has made no provision for any particular officer to call the Convention to order. At the request of several gentlemen, I now call you to order.

We will first invoke the blessing of Almighty God. The Convention will rise.

Prayer by Rev. L. N. Stratton, of Sioux Falls:

Great and Eternal Father, Thou King of Kings and Lord of Lords, before whom angles bow and to Whom nations must submit, we pray Thee to let Thy blessing rest upon this gathering this day. Grant, we pray, O God, to assist the members of this Convention in all of their deliberations, in all of their plans, and business, and duties and arrangements, and help them to realize that Thy mercy is upon them. We thank Thee that Thou hast sent them here. We thank Thee that they have at last reached this stage in their history as citizens of a new state. Grant, O God, that Thy blessing may rest richly down upon them. Give them wisdom, knowledge and understanding, and lead them to know that the God of this nation is their God, and that they must trust in Him and rely upon Him in all their duties and plans. Bless the Presiding Officer of this Convention, whomsoever he may be. Bless all the officers in any degree or grade below him; and grant that in all of the business arrangements and duties of this gathering there may be a realization of the presence of God.

We ask it in the name of Jesus, our King,
AMEN.

Mr. Corson, of Lawrence: I will ask Mr. Caldwell to read the Proclamation of the Governor.

Mr. Caldwell, of Minnehaha: I will say that there are some typographical errors in the proclamation as printed, and that I will correct them so far as I may know them to be such. In the Tenth District there appears a name which is entirely wrong—the name "Albert Hall". The certificate of election for the third member from that district has been issued to Charles H. Price.

Mr. Corson, of Lawrence: Perhaps you will read it as proclaimed, as it will have to be corrected by the Convention.

Mr. Caldwell, of Minnehaha: All right.

Mr. Caldwell here proceeded to read the Proclamation of the Governor, entitled,

PROCLAMATION

—of the—

Election of Delegates to the Constitutional Conventions

—of the—

States of North Dakota and South Dakota.

But only such names of delegates were read as were by the Proclamation declared elected delegates to the Constitutional Convention of South Dakota.

Mr. Corson, of Lawrence: For the purpose of knowing how many members are present in this Convention I will direct now the roll to be called, and each member as his name is called will announce the fact, if he is present.

(The roll as contained in said proclamation, after being corrected, was called by Mr. Caldwell.)

Mr. Corson, of Lawrence: There are five absentees: Charles M. Thomas, J. G. Davies, R. C. Anderson, E. E. Clough, and Clark G. Coates, are absent. All the members elected to this Convention being present, excepting five, and there being more than a quorum, the Convention can proceed to the election of the president of the Convention. Nominations for President are now in order.

Mr. Neill, of Grant: I think the proper order in this Convention now is to proceed to take the oath of office.

Mr. Corson, of Lawrence: You are correct. I beg your par-

don. The members of the Convention will now proceed to take the oath of office. The Hon. Bartlett Tripp, Chief Justice of the Supreme Court of the Territory, will now come forward and administer the oath. The members of the Convention will all rise.

The Hon. Bartlett Tripp, Chief Justice of the Supreme Court: You and each of you do solemnly swear that you will support the Constitution of the United States, and that as members of this Convention, you, under the Act of Congress enabling South Dakota to be admitted as a State of this Union, will well and faithfully discharge the duties of that office according to your best learning and discretion, with all good fidelity to yourselves as well as to the people. So help you God.

Mr. Corson, of Lawrence: Before leaving the hall, the members of the Convention will attach their signatures in order that Judge Tripp may affix the jurat to the oath.

Nominations for President of this Convention are now in order.

Mr. Spooner, of Kingsbury: Mr. Chairman, In view of the fact that we are about to proceed to inaugurate statehood, real, and also that we wish to recognize the services of those who have assisted us in making this possible, I beg leave to present the name of the Honorable A. J. Edgerton, of Davison County, for President of this Convention.

Mr. Sherwood, of Clark: Mr. Chairman, I rise to second the nomination of this tried captain and skillful pilot of our ship of state, recognizing that for four years the ship which he lanuched, as captain, upon the stormy sea, has been honored in every port, and that now as we are entering into the harbor, we can have no surer guarantee that we will reach that harbor safely than to place this skillful captain at the helm. I therefore second the nomination of Honorable A. J. Edgerton. (Applause).

Mr. Price, of Hyde: Mr. Chairman, I take pleasure, Sir, in presenting the name of S. B. Van Buskirk, of Codington County, for permanent President of this Convention. Without derogating anything which has been said of the eminent jurist who has been placed in nomination, I can commend to you S. B. Van Buskirk as a man eminently qualified to fill the important duties of that station. A friend of statehood, he has labored in the past, he believes in the present, and is hopeful of the future, and would make this Convention an excellent president.

Mr. Corson, of Lawrence: Are there any other nominations?

There being no other nominations I declare the nominations closed. Judge A. J. Edgerton and Mr. S. B. Van Buskirk are nominated. How shall these gentlemen be voted for at this time?

A Voice: Roll call.

Mr. Corson, of Lawrence: The roll will be called and each member as his name is called will announce the candidate for whom he intends to vote; and I will ask Mr. Caldwell, of Minnehaha, and Dr. McGillicuddy, of Pennington, to step forward and take the names as they are called. As each gentleman's name is called he will announce the gentleman for whom he votes.

(Three delegates had voted when Mr. Van Buskirk took the floor.)

Mr. Van Buskirk, of Codington: Mr. Chairman: I desire at this time to decline the nomination, and will withdraw my name. (Great applause.)

Mr. Neill, of Grant: Mr. President, I move that the calling of the roll be dispensed with and that A. J. Edgerton be elected by acclamation as the President of this Convention.

Mr. Corson, of Lawrence: I think the motion is out of order, unless it is without objection. If any gentleman objects to our dispensing with the roll call he will now make it manifest. (Momentary pause). There being no objection, the motion is in order. It is moved and seconded that the roll call be dispensed with and that the Honorable A. J. Edgerton be declared the unanimous choice of this Convention for President. Are you ready for the question? (Question) (Question). As many of you as are in favor of that motion will signify it by saying aye. As many as are opposed, will say no. The ayes have it; and the Hon. A. J. Edgerton is unanimously elected President of this Convention. (Applause). I will appoint Dr. Spooner and Mr. Van Buskirk a committee to escort Judge Edgerton to the chair.

■ The Honorable A. J. Edgerton, President elect, was escorted to the chair amid great applause.

Mr. Corson, of Lawrence: Gentlemen of the Convention: I have the pleasure and honor of presenting to you the gentleman whom you have selected as your President, the Hon. A. J. Edgerton. (Applause).

A. J. Edgerton: Gentlemen of the Convention I can not express to you upon this occasion the feeling that I en-

tertain not only by reason of your selection of myself to this place for the second time but in the manner in which it has been done. All that I can say to you now is that I shall endeavor to perform its duties to the full extent of my ability for the best interests of South Dakota, and I know that you will aid me in presenting to the people of South Dakota and the world a constitution unrivaled, and that we may hereafter, under it, succeed to all of those rights that in the opinion of some of us we have been so long prevented from securing.

I thank you again, gentlemen, for this selection at the hands of this Convention.

What is the further pleasure of the Convention?

Mr. Wescott, of Deuel: Mr. President, I move that E. W. Caldwell of Minnehaha, be elected Temporary secretary.

A Voice: I second the motion.

By the President of the Convention: It is moved and seconded that E. W. Caldwell, of Minnehaha be elected Temporary Secretary of the Convention. Are you ready for the question? All those in favor of this motion will signify it by saying aye; contrary no. The ayes have it and Mr. Caldwell is unanimously elected the Temporary Secretary of this Convention.

Mr. Jolley, of Clay: Mr. President, I move that a committee of five be appointed by the Chair to provide rules for the government of this Convention.

A Voice: I second the motion.

By the President of the Convention: It has been moved and seconded that a committee of five be appointed by the Chair to provide rules for the government of this Convention. Are you ready for the question? As many as are in favor of this motion will signify it by saying aye; contrary, no. The ayes have it, and the motion prevails.

The President appointed and the Secretary read the following names of gentlemen appointed as the committee to provide rules: Mr. John L. Jolley, of Clay; Mr. Wood, of Pennington; Mr. Clough, of Codington; Captain H. A. Humphry, of Faulk; Mr. F. G. Young, of Lake.

Mr. Kellam, of Brule: Mr. President, after congratulating you, Sir, and the members of this Convention now assembled, and the people generally of South Dakota, I desire to move that the President of this Convention be authorized and requested to com-

municate by telegraph the greetings and congratulations of this Constitutional Convention to the Constitutional Conventions of North Dakota, Montana and Washington. (Applause).

Mr. Neill, of Grant: I second the motion, Mr. President.

The President of the Convention: You have heard the motion made by Mr. Kellam, of Brule. Are you ready for the question? As many as are in favor of the motion will signify it by saying aye; those opposed, no. The motion prevails.

Mr. Van Tassell, of Sanborn: Mr. President, I move you, Sir, that the President of this Convention nominate a Conference Committee of three to confer with the North Dakota Convention as to the size of a joint committee to be selected by the two Conventions, that being unsettled in the Act of Congress.

Mr. Lee, of Spink: Mr. President, I second the motion.

The President of the Convention: Gentlemen of the Convention, it has been moved and seconded that a committee of three be appointed by the Chair to confer with the North Dakota Convention as to the size of the Joint Committee to be selected by the two Conventions. Are you ready for the question?

Mr. Humphrey, of Faulk: Mr. President, being one of the Committee on Rules, I hesitate to speak on this question; but the facts are, it seems to me that it would be a part of the province of the Committee on Rules, and a part of its business to present this matter to the Convention for its action, and it does not seem to me that it should be a matter to delay our adjournment on this Fourth of July, and that there will be ample time to consider it after the report of the Committee on Rules.

Mr. Kellam, of Brule: Mr. President, my thought is this, that this is one of the first steps that this Convention should take preliminary to the act of the State's admission, provided for by the Omnibus Bill. I understand that this is simply the appointment of a committee to confer with the North Dakota Convention as to the number of gentlemen comprising this commission and the time as to when they will be prepared to meet with the commission from South Dakota. With no disrespect to the Committee on Rules—this is an exceptional committee, and I think that the judgment of this Convention would be that the sooner we can get this matter in the hands of the Commission, inasmuch as it is the only matter that will necessarily consume any great length of time,

the sooner this Commission will get to work, and the sooner they will be prepared to report. My judgment is that this is one of the first steps this Convention should take. It cannot be done until we have conferred with the North Dakota Convention.

Mr. Wescott, of Deuel: Mr. President, I move an amendment to the motion before the House, that this be left to the Committee on Rules—let them see to this matter and return their report after conferring together—after conferring with the Committee appointed by that Convention.

The President of the Convention: It is moved that a committee of three be appointed to confer with the North Dakota Constitutional Convention. It is now moved by the gentleman from Deuel that this question be left to the Committee on Rules. Are you ready for the question? (Cries of "Question"). The first question will be on the reference. Those of the opinion that this be referred to the Committee on Rules will say aye; those opposed say no. The Chair is unable to decide. Those in favor of the reference will rise and stand while the Secretary counts. You will now be seated. Those of the contrary opinion will rise while the Secretary counts.

The Secretary reported that there were 36 ayes, and 25 noes.

The President of the Convention: The reference moved by the gentleman from Deuel is carried, and the whole question is referred to the Committee on Rules.

Mr. Neill, of Grant: Mr. President, I move you that we now adjourn until two o'clock tomorrow afternoon.

Mr. Caldwell, of Minnehaha: Mr. Chairman, I desire to move that the rules of the Constitutional Convention of 1885, shall obtain so far as they may be applicable, until the report of the Committee on Rules is adopted.

A Voice: I second the motion.

The President of the Convention: Are you ready for the question? It has been moved and seconded that the rules of the Constitutional Convention of 1885, shall obtain so far as they may be applicable, until the adoption of the report of the Committee on rules. Those of the opinion that the motion prevail will say aye; contrary no. The motion is carried.

Mr. Neill, of Grant: Mr. President, I will now repeat my motion to adjourn.

Mr. Williams, of BonHomme: Mr. Chairman, in our gathering

(referring to Republican caucus) it was determined that the other temporary officers would be appointed at this time.

A Voice: No Sir; only such as were necessary.

By the President of the Convention: That has no force in this Convention. It has not been acted upon by this Convention. It has been moved to adjourn until tomorrow at two o'clock. Those of the opinion that the motion prevail will say aye; contrary no. The motion prevails and the Convention is adjourned until two o'clock tomorrow afternoon.

ADJOURNED.

SECOND DAY.

Friday, July 5th, 1889.

Two o'clock P. M.

The Convention re-assembled pursuant to adjournment. Mr. Kellam, of Brule, in the chair.

Mr. Kellam: I find a note from Judge Edgerton, President of the Convention, asking me to take his place during his absence, for the day; this is the explanation of my being in his place. The Clerk will please read the note.

Which was done as follows:

Sioux Falls, Dak., July 4, 1889.

HON. A. G. KELLAM:

Will you please act as President, pro tem. of the Convention under the rules, during my absence.

A. J. EDGERTON.

The roll was called and every member answered to his name as called.

Mr. Neill: I move that if there are any delegates present today that were not sworn in yesterday, that the presiding officer, (if authorized to do so) administer the oath of office to them at this time.

The President, pro tem: Are there any delegates here now who were not present yesterday to take the oath of office, if so let it be known. It being a matter of considerable doubt whether the President pro tem. will be authorized to administer this oath, if these gentlemen will come forward, a Notary Public is present, and will administer the oath of office.

H. M. Avery, Notary Public, administered the oath of office to the following delegates who presented themselves for that purpose: E. E. Clough, of Codington County; J. G. Davies, of Edmunds; and R. C. Anderson, of Hand, as follows:

You and each of you do solemnly swear that you will support the Constitution of the United States and that as members of this

Convention you, under the Act of Congress enabling South Dakota to be admitted as a State of the Union, will well and faithfully discharge the duties of that office according to your best learning and discretion with all good fidelity to yourselves as well as to the people, so help you God.

The President pro tem: The Convention will now listen to the reading of the Journal.

As the reading of the Journal proceeded the following corrections were suggested:

Mr. Anderson: My residence should be Hand County.

Mr. Lyon: Lake County should read Miner County.

Mr. Scollard: Lawrence there should be changed to Meade; a portion of Lawrence County was attached to Meade County and Butte County, making up the third district; just one tier of townships.

The President pro tem: The territory from which you are elected is now part of Meade County.

Mr. Culver: I would suggest the correction, making the Journal read, Marshall County, where it now reads Day County.

Mr. Jolley: In the Twenty-first District, Kimball, of Union, should be Kimball of Clay County.

Mr. Clough: I am down in the report as a laggard yesterday; I do not like to go into history as a laggard without the knowledge that I am a substitute; I would like to have the Journal of the Proceedings changed just a little; that portion saying, "All members responded except" etc. I was substituted to perform a public service, connected with the national celebration yesterday. I was not a laggard.

The President pro tem: The members, as they take the floor, will announce their names, so that the stenographers may know to whom to credit what is said; we are making history now.

Mr. Neill: I call Mr. Caldwell's attention to the fact that he was clerk, pro tem; the Journal was not so signed.

The President pro tem: The Chair did not understand the suggestion of the gentleman from Codington, to be in such shape that any action should be taken upon it; does the Convention consent to the correction of the minutes so as to correspond with the correction suggested by Mr. Clough?

Mr. Neill: I do not understand how the Convention can.

Mr. Clough: I believe it is due a man that did as hard a piece of work as I did yesterday, without any notice, that he do not go

into history as a laggard; I think it is due to me; that it ought to be said in some form and some way, why I was not here. I was detailed at Sioux Falls, to give a public address, as a substitute, and was so engaged during the hour set for the assembling of this Convention.

The President pro tem: Is there objection to the correction of this record so as to correspond with the suggestion of Mr. Clough?

Mr. Neill: I have no objection to its being done in that form; to take some action today, explaining the absence is another thing; I do not think that a correction in yesterday's proceedings would be regular; I do not think it would be in place.

Mr. Caldwell: I would say that I remember there was some mention made at the time, of Mr. Clough's absence, of his being in the city; I believe some reference was made to the circumstances of his absence; that being the case it might, without any very great disturbance be incorporated in here as of the proceedings of yesterday.

Mr. Lee: I think the gentleman from Minnehaha was correct; we mentioned the fact Mr. Clough was doing his duty on our great celebration day.

Mr. Matson: I noticed particularly, that the explanation was made, that Mr. Clough was in the city; no statement at all as to what he was doing; simple statement was made that Mr. Clough was in the city.

A Voice: If the correction is made as suggested, how will you explain this fact that all the other members were sworn in by the Chief Justice, and he comes in today and is sworn in by a Notary Public.

The President pro tem: I do not understand that the record should be so changed as to show his presence on yesterday, but the record should be so amended as to show why he was absent. Does the Convention object to the words suggested by Mr. Clough, which shall explain upon the record the reason of his absence, being inserted? If there is no objection now made, it will be taken as the sense of the Convention that the record should be so amended.

The Chair hearing no objection, the Journal will be so amended.

Mr. Heninger: In the printed list of the names of the members of the 6th District, my name is spelled wrong.

The President pro tem: There being no further corrections, the record will then stand as read and amended.

The President pro tem: The next order of business is communications and presentations of petitions.

Mr. Caldwell: There are two communications upon the table of the Clerk.

The President pro tem: The Convention will listen to the reading of the communications.

The Clerk reads as follows:

Bismarck, Dakota, July 4th, 1889.

TO THE CONSTITUTIONAL CONVENTION OF SOUTH DAKOTA, SIOUX FALLS, DAKOTA.

The Constitutional Convention of North Dakota sends greeting and bids you God speed in your advance movement towards statehood and full American citizenship. May the four new stars about to be added to the national flag not lose in brilliancy through lack of care in laying the foundations of the states to be. Let Washington bring fruits and flowers, Montana its precious metals to add to the beauty and wealth of the nation, while the Dakotas will bring wheat and corn to feed the people of the world.

F. B. FANCHER,
President.

Olympia, Washington Ter., July 4, 1889.

HON. A. J. EDGERTON,

President of the South Dakota Constitutional Convention,
Sioux Falls, Dakota.

The Washington Constitutional Convention returns greeting to the South Dakota Convention.

The time is auspicious. The Empire State of the Pacific Northwest will join her sister in every onward development.

J. G. MOORE,
Chairman.

The President pro tem: The next order of business under the rules, is unfinished business, of the previous day.

Mr. Caldwell: If I may be permitted, I would like to bring up something that is properly in the nature of a communication.

The President pro tem: The Convention will return to that order of business.

Mr. Caldwell: The general government as it provides the two houses of the Territorial Legislature with a daily journal, and also provides for the printing of the Journal at the close of the session, the representative of Secretary Richardson,—Mr. C. W. Hubbard,—has arranged for the printing, daily, of the Journal of this body, which will be paid for by the general government; and the communication is to the effect that this will be printed.

Now then, I would like to ask for directions here; that the Convention give instruction as to the number of copies it would like to have, and that there be an arrangement made for the correction of the Journal, in order that the daily Journal may be properly arranged for going into the volumes which shall be printed. This is at the request of Mr. Hubbard, representing the Secretary of the Territory.

The President pro tem: The rules now in operation, (being the rules of the last Convention) provide that the President of the Convention shall correct the Journal before presenting it next day. This is a matter of work of the President by the rules. If such rule shall not be reported by the Committee on Rules when they report, then such action can be taken by the Convention as to that matter as they think advisable; the present rules impose upon the President that duty.

Mr. Caldwell: Dictate the number of copies that shall be ordered printed, and the Secretary will liquidate the bill.

Mr. Sterling: In order that the matter may be brought before the Convention, I move that two hundred copies a day be printed, of the Journal; that will bring out an expression.

Mr. Lee: I rise to second the motion.

The President pro tem: Is the Convention ready for the question?

The motion reaching a vote, prevailed.

Mr. Caldwell: I also make a communication from the representative of the Secretary, to the effect, that provision has been made for placing upon the desk of each member a small placard giving his name and county; that these will be furnished at such a time as the Convention may determine the location of its several members. I make this communication in order that if the Convention desires to have any different arrangement of the members,—to determine the seats by lot, it may be attended to, so that once the seats of the various members be definitely determined upon, these placards will be attached to the desk, and so that it will enable members either in front or back to know who it is speaking. I make this communication merely for the convenience of the Convention.

The President pro tem: I think the Convention understands the suggestion clearly with reference to the cards to be attached to the desks, and if the Convention desires to take any action in

regard to the location of the members in seats, it will be desirable to do that before this plan is put into execution.

Mr. Price: I move you, Sir, that we proceed to the selection of seats by lot. I notice today, the seats are not occupied by the same members of the Convention that they were yesterday in a great many instances; in order to avoid any trouble in that direction, I think this should be done without delay.

Mr. Lee: My head is snowed by number and weight of years. I am a little deaf. I selected this seat; I think the majority selected seats yesterday; we are all quite well-fixed here; I do not think we can better ourselves with a change; if we do, I want the privilege of being one to retain the seat already selected.

Mr. Neill: What order of business are we working under just now?

The President pro tem: Communications and presentations of petitions.

The President pro tem: The gentleman from Hyde, (Mr. Price) does not seem to be supported in his motion, and the question can be renewed later, if he desires to do so.

The President pro tem: The Convention will now give its attention to unfinished business of the previous day.

Mr. Neill: I move we proceed to the election of subordinate officers of this Convention.

Which motion was duly seconded and coming to a vote, prevailed.

The President pro tem: The Convention will now proceed to the election of subordinate officers.

Mr. Atkinson: The Act of Congress under which we are at work, does not provide for a very strong clerical force, and as some of the subordinate officers will probably not have much to do in that line, I move you that they be selected with the understanding that they do such work as is required of them, even if it is not in the line their position would indicate. The Door Keeper, and Messengers will have very little to do; we may as well select a man that is a ready penman, that we might use him writing part of the time, and make him earn his money; that will help us out.

Which motion did not receive a second.

Mr. Edgerton, of Yankton: I place in nomination for the position of Chief Clerk, Rev. F. A. Burdick, of Yankton County.

Mr. Van Eps: I place in nomination W. W. Goddard, of Sioux Falls, for Chief Clerk.

The President pro tem: I appoint Mr. Sterling, of Beadle, and Mr. Elliott, of Turner, as tellers to take the ballot.

Mr. Harris: I move that this election be by *VIVA VOCE* vote upon calling the roll.

Which motion prevailed.

The President pro tem: The motion prevails, and the Chief Clerk will be elected *VIVA VOCE*; each member responding to his name as called, the candidate of his choice.

As a result of said ballot, Mr. Burdick received fifty votes and Mr. Goddard, twenty-one.

The President pro tem: The Convention has selected F. A. Burdick as Chief Clerk.

Mr. Wescott: If it is in order to make a nomination of Enrolling and Engrossing Clerk, I take pleasure in placing before the Convention, for that position, Dr. A. W. Hyde, of Brookings County, a gentleman of culture and in my judgment peculiarly fitted for the duties of that office, and if he is elected will honor the position.

Mr. Harris: I would place in nomination, James Kingsbury, of Yankton County.

The President pro tem: There being no dissenting voice, it will be taken as the will of this Convention that these elections, be by *VIVA VOCE* vote. You have as nominees for the position of Enrolling and Engrossing Clerk, Dr. A. W. Hyde, of Brookings County, and James Kingsbury, of Yankton County; as your names are called, respond to the candidate of your choice.

Mr. Hyde received fifty votes, and Mr. Kingsbury nineteen, and Mr. A. W. Hyde was declared duly elected to the position of Enrolling and Engrossing Clerk.

Mr. Corson: I now move we proceed to the election of Sergeant-at-Arms of this body; I nominate James Carney, of Lawrence County, for that position. Mr. Carney is one of our old residents, and is the only officer of the Convention we are asking for west of the river, and I hope he will receive the vote of this Convention.

Mr. Van Buskirk: I nominate W. T. Buchanan, of Minnehaha County.

Mr. Price: I take pleasure in seconding the nomination of Mr. Buchanan.

Nominations being declared closed, the Convention proceeded to VIVA VOCE vote, which resulted in the election of James Carney to the position of Sergeant-at-Arms,—he receiving fifty votes, and Mr. Buchanan, twenty-one votes.

Mr. Dickinson: I move we now take up the election of a Watchman, and name E. C. Warner, of Webster, Day County, for that office.

Mr. Neill: There appears to be no other nominees, and we might expedite matters, by electing Mr. Warner by acclamation; that is the motion I make.

Which motion was duly seconded.

Mr. Caldwell: Does the rule permit it?

The President pro tem: I do not know of any rule upon the subject.

The motion prevailed, and Mr. E. C. Warner, was declared elected to the office of Watchman of the Convention.

Mr. Matson: I move the election to the office of Messenger, Frank Hoppin, of Iroquois.

Mr. Anderson: I place in nomination, Mr. P. D. Durflinger, of Hand County.

The President pro tem: In the absence of a motion I shall take it the sense of the Convention to proceed as before to a VIVA VOCE vote.

Mr. Hoppin received forty-eight votes, and Mr. Durflinger twenty-three. Mr. Hoppin was declared elected to the position of Messenger of this Convention.

Mr. Willis: I will nominate to the office of Chaplain, Rev. J. A. Wakefield, of Brookings.

Mr. Ramsey: I wish to place in nomination for the position of Chaplain, Bishop Hare, of Sioux Falls.

Mr. Wakefield received forty-five votes, and Bishop Hare twenty-six.

The President pro tem: By your vote as announced, Rev. Mr. Wakefield is elected Chaplain of the Convention.

Mr. Sherwood: Are the offices now all filled? If that is the case, and it would be in order at this time, I offer this resolution and move its adoption.

The Constitutional Convention of South Dakota, now duly assembled and organized, does hereby declare on behalf of the people of said State, that we do hereby adopt the Constitution of the United States.

Mr. Caldwell: I am not certain Mr. President, and will simply ask generally for information, if he has consulted the Organic Act, and whether or not this complies exactly with the requirements; I do not think such a resolution must be adopted.

Mr. Sherwood: It is as the Omnibus Bill requires; it is exactly the language of the section. (Reading from the Act.)

The President pro tem: The gentleman moves the adoption of this resolution as read by the Clerk.

Mr. Neill: I suggest that that be adopted by rising vote. Which suggestion was acted upon without objection.

The President pro tem: Seventy-three gentlemen have voted, and all have voted in the affirmative. The resolution is unanimously adopted.

The President pro tem: We will now pass to the order of business. Unfinished business.

A Member: I move that each delegate be allowed to write his name upon the desk blotter on the desk in which he prefers to sit (unless there are members who wish to change) and then the cards that are presented can be fastened upon the desks and compared with the names so written, as suggested by Mr. Caldwell, of Minnehaha.

Mr. Lee: Would it not be well to have those of the same county delegation sit near each other; would not it be well to have a few changes.

Mr. Caldwell: I believe it will give better satisfaction if there should be a determination of seats by lot. The custom in at least the Territorial Legislature, I believe is, that the number of seats to be drawn are written upon ballots, put into a box, and that they are then drawn out, then the one who gets the first number has the choice; it is not that he draws a seat per number but that he draws a choice; I believe that will be more satisfactory.

The President pro tem: The gentleman at my right made a motion, but it is not before the Convention.

Mr. Neill: I rise to a point of order; some of these motions being made out of the order of business; this all comes up in the proper place. We now have the matter of unfinished business.

The President pro tem: The Chair entertained that business as long as no objection was made; if the gentleman will let his motion remain until we reach that order of business.

The President pro tem: The report of select committees is called for.

Mr. Jolley: The committee on rules have met and agreed substantially upon the rules that they will submit for the consideration of this convention. That they will differ but slightly from the rules of 1885 convention, and the result is that the rules that the committee are going to report will have to be adopted. (Laughter.)

We have met this dilemma in the Committee; we find we have not a gentleman on this Committee who can write; we will probably be ready to report for the consideration of this Convention tomorrow afternoon; there is one branch upon which the Committee are agreed, and I am instructed to report this afternoon, and this is substantially the views of the Committee.

Sioux Falls, Dak., July 5th. 1889.

MR. PRESIDENT:

Your Committee on Rules have instructed me to report that the Joint Commission on the part of South Dakota to agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records and adjust and agree upon the amounts of debts and liabilities of the Territory shall consist of seven members, to be appointed by the President of this Convention; that said Commission be entitled to a clerk, and to employ such assistance as they shall deem necessary.

JOHN L. JOLLEY,
Chairman.

Mr. Jolley: For the purpose of bringing this report before the Convention, I move you, Sir, that the report be adopted.

Mr. Neill: I second the adoption of the report.

The President pro tem: You have heard the report of the Committee on Rules; the question before the Convention is upon the adoption of this report just read to you by Mr. Jolley.

Mr. Jolley: That part of the report,—that on which this rule is founded is Section Six of the Omnibus Bill, which reads as follows:

It shall be the duty of the Constitutional Conventions of North and South Dakota to appoint a joint commission, to be composed of not less than three members of each Convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory, which shall be assumed and paid by

each of the proposed States of North Dakota and South Dakota; and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said States shall oblige itself to pay its proportion of such debts and liabilities the same as if they had been created by such States respectively.

The Committee have instructed me to report verbally that they considered this matter this morning and did not deem it part of their duty, and did not deem it the part of prudence to consult North Dakota before selecting this number. It is not one of those things to be considered; suppose North Dakota had ten, and South Dakota had seven members of that Commission, it is for each of these states to say whether they will adopt the report which is agreed to by the Commission coming from each one of these states. After consultation with a number of the members of the Convention, the highest number asked for by any of the members of the Committee was placed at seven; the Committee reported seven; that they should proceed as quick as they are named, to Bismarck and at once agree upon the division; when that is made, then it comes before this Convention whether it will adopt their report. Mr. President, it is desirable and you assume the responsibility of appointing the committee recommended I should not like to stand in the way, or hinder a speedy settlement of the matter, that we may get the report of this Commission before us. If there is hurry necessary, I certainly shall not in Convention delay this action; the Committee before considered this matter fully and now ask your consideration of the report; I am certainly in favor of receiving the report and relieving the Committee from a portion of their work. I would like to explain a little further why we made the number, "seven". We said if three politicians went up there and made a settlement, they would be in a sort of political purgatory at once; and it was not safe to serve any body of green politicians that way; there are seventy-five members of that Convention, and if they have but three members of that Commission there would be seventy-two others behind them; for moral force; we felt we ought to have just as heavy moral force behind our men proportionately as they have behind theirs; we believe that these gentlemen going into the face of another Convention ought to have the moral force of numbers and therefore, we unanimously, on that ground, settled the number at seven.

Mr. Hartley: I rise to a point of order; as I understand the

first motion will be received instead of being adopted; I therefore move that this report of this Committee be received.

The President pro tem: The Chair did not understand the point of order; this is a report of a select committee presented and read to the Convention; it is received without action on the part of the Convention; the Chair so understands it.

Mr. Peck: I will move as a substitute, that the report be received and the adoption remain an after consideraion.

The President pro tem: It is moved that the report simply be received by this Convention. Are you ready for the question on the amendment?

Mr. Jolley: There can be no question about the parliamentary practice on such a motion as that (?) When this Convention appoints a committee and asks a report at its hands and they present that report, it would be the height of courtesy to make a motion to receive it; if the gentlemen do not like this report, or if there is anything wrong about it, they can correct it; the proper way is to vote it down or either send it back to that Committee, or another one, but to refuse to receive the work of a committee asked to make a special report is folly.

The President pro tem: The Chair has already expressed its opinion.

Mr. Lee: It is a distinction without a difference which is not right; the question now is upon the adoption of the amendment. I move you that clause of the resolution authorizing a clerk, be stricken out, for the reason there is no provision for paying this clerk; it is too much to ask a man to go up there and pay his own expenses.

Mr. Clough: If it is in order, we believe that there is provision for the payment of this clerk, and believing that the provision is in this matter, we may mention, the Commission will have to have maybe, two or three clerks; the work of the Commission will require a great amount of accountant work.

The President pro tem: The question as to an appropriation for a clerk is not before the House; it is out of order; the question is now upon the adoption of the amendment of the gentleman substituting the term "receive" this report for its adoption.

Mr. Peck: I would like to inquire whether receiving this report, adopts it, or whether receiving it leaves the adoption of it until bye and bye, and leaves the power of appointing this Com-

mittee unsettled. My understanding is, if we receive this report, it lays there for consideration by the Convention. If we adopt it, it is past consideration.

The President pro tem: This report is received when it is accepted,—when it is returned to this Convention and read, it is then received; then action is taken as to its adoption or non-adoption; does the gentleman insist upon the motion that the report shall be received? The opinion of the Chair is, that the motion is out of order, but the Chair is disposed to put it. The Chair is now going upon the theory of the mover of this motion, that this will not in any way commit the Convention to the action suggested in the report but simply allows this Committee to make this report to us.

Mr. Peck: If you will allow me to say, we have already received this report,—what I desire to do is not to part with my right and privilege to look this over and a little further consider the matter before it passes out of my hands,—and if it is a fact we have received it already, and must vote upon the resolution that is the end of it so far as we are concerned; and this is action by the Convention that would almost force me to move that it lay upon the table until tomorrow, to accomplish my desire; all I want is to get a little time to consider the matter that the Committee have had before them.

Mr. Wescott: I second the motion of Mr. Peck, (of Hamlin) that it lay upon the table.

Mr. Jolley: I rise to a point of order, that the motion is out of order.

Which point of order was sustained by the Chair.

Mr. Price: I move you, Sir, that the consideration of the resolution as presented, be made a special order for tomorrow after this body convenes. It is a matter of a great deal of importance and something that should be considered carefully. There is another question involved in this matter and the members ought to have plenty of time to think about it. It is this question, whether or not under the provisions of the Omnibus Bill you can delegate the power to the President of this Convention to appoint this Commission. I am not ready to say we can! I think we should thoroughly investigate this matter.

Mr. Jolley: On behalf of the Committee, would say, we are

glad the motion has been made to postpone action. So far as the suggestion made by Mr. Price, that question presented itself to the Committee and we took this view of it, by presenting the report that we did to the Convention, and the Convention adopting that report,—if they did adopt it,—made it the action of the Convention, to delegate the power to the President to appoint the Commission; if that was not sufficient power, then after the Commission had been appointed by the Chair, to have the Convention ratify that again.

Mr. Atkinson: I have no objection as to this delay in this matter, but it seems to me that this Committee should be appointed at the earliest possible moment and be on their way to Bismarck. It seems to me that we might arrange these matters now, as far as the difference in opinion as to whether the President appoint or the Convention elect; we can in a short time elect them this afternoon. Let them be appointed and let them be on their way. This delay is expensive.

Mr. Wood: The suggestion of the gentleman with reference to the cost of delay is not important if my position is correct; I have been advised of the fact that the Convention at Bismarck is not fully organized and its organization will not be completed before Monday, consequently if our Commission should arrive before Tuesday, it will have to wait at Bismarck. The proposition suggested by my friend, Mr. Price, is a matter that presented itself to the Committee and so far as I am concerned, I would like to hear it discussed in the Convention. There may be a question of delegation of power. The Committee of course considered the proposition; I would like to have the members of the Convention consider it for the purpose of making assurance doubly sure that we make no mistake in that regard. We had better take until tomorrow. I would not cause delay, but it is evidently the sense of the Committee that we take a little time to consider this matter; today is Friday, tomorrow is Saturday, and you could not get started the way the trains run to Bismarck. As a matter of fact you will gain nothing by acting today. Sunday comes before you could reach Bismarck. I think the opinion is almost unanimous that the matter rest until tomorrow and give the gentlemen this time to examine the matter thoroughly and discuss it.

Mr. Humphrey: If the only question at issue is the question of the authority of the Convention to confer upon the President

the power to appoint,—said appointments to be ratified by the Convention,—it would save time that might perhaps be more profitable to give to the President in making his selection of the members of that Committee, if this is disposed of at this hour. Mr. President, it is not probable that the appointment would be made in time for the Commission to leave for Bismarck before Monday or Tuesday; it is not probable that he would appoint them in a moment; it is not probable that he would appoint them before sometime tomorrow, at the earliest time, and if this is the only question involved to necessitate delay, it seems to me it might be overcome by adding these words "said appointments to be ratified by this Convention". I would move you Mr. President, if it is in order to place a motion before the House to that effect, that the words, "said appointments to be ratified by this Convention" be added to the report of the Committee on Rules.

Mr. Spooner: I support the original motion; I think this should be a matter of mutual consideration; the Committee have had an opportunity to consider it, and the Convention desires the same opportunity.

The President pro tem: The question is upon making this partial report of the Committee on Rules the special order for tomorrow.

Which motion prevailed unanimously.

The President pro tem: The next order of business to occupy the attention of this Convention will be consideration of reports of standing committees.

Mr. Price: I desire to present a matter which I think of considerable importance, to the two states about to be formed, and one upon which action should be taken; that is relative, Mr. President, to the boundaries of the two new states. You will remember, Sir, that the Omnibus Bill provides that the boundary shall be changed from the Forty-sixth Parallel to the Seventh Standard Parallel. It is true, Sir, that there are two Seventh Standard Parallels in Dakota Territory; a fact which may not generally be known. It seems to me that this is a matter of great importance; that in defining the boundaries between North and South Dakota, it ought to have the careful attention of this Convention. I say, it is fraught with importance for this reason; there are two Seventh Standard Parallels well defined, and both of them have been endorsed and reported, and have been through the Interior Depart-

ment, adopted. I have before me a diagram showing the exact condition of things relative to this matter, prepared by the Surveyor General of Dakota, together with a letter of explanation, which enters into the full details of the whole matter. It seems to me that if this question is not decided between the Conventions of both North and South Dakota and boundary lines agreed upon, well defined and interpreted, endless trouble and litigation will grow out of it. It is true if we shall adopt and unanimously declare the 7th Standard the boundary, North Dakota can claim one and South Dakota, the other, both approved by general government. Another thing to be taken into consideration by this Convention especially is this; that if a general plank shall go into this Constitution proclaiming and declaring the 7th Standard Parallel the boundary line, North Dakota will get a great many acres of land which does not belong to her, and in that land are several school sections which sometime we hope will be very valuable; but without discussing this matter further, I desire to move that a commission consisting of three members be appointed by the Chairman of this Convention to confer with a similar committee to be requested to be appointed by the North Dakota Convention, to determine upon and define the boundaries of this Territory. I will suggest this further that I have before me a complete diagram of the whole matter and have a letter which explains the whole matter in its fullest details and the Committee whoever may be appointed especially, shall have the use of them.

Mr. Elliott: I second the motion.

Mr. Sherwood: It seems to me as this is a new matter also coming before the Convention, and as it seems new matter entirely, to all of us, that this should bear consideration as well as the matter we have already considered. If the other needs consideration, and if we are to send a commission to North Dakota to settle other differences, why would it not be well to incorporate into their duties the settlement of this difference? I also move that this matter be made a special order of business for tomorrow.

Mr. Price: I will consent that it be made a special order.

Mr. Dickinson: I move you that a committee of five be appointed by the Chair to take this matter under consideration to report tomorrow as to the facts in the case as they find them, with recommendations.

Mr. Neill: I think we will be under the necessity of placing

a great many committees, and we are forestalling the work of our Committee on Order of Business. The best thing we can do at the present time, is to adjourn at once and wait for their report. I move we do now adjourn.

Mr. Clough: I move that when we do adjourn, it be until two o'clock.

Mr. Neill: I accept that.

The motion to adjourn, coming to a vote, a rising vote was called for, which resulted in forty-one votes in the affirmative and nineteen votes in the negative, and the Convention stands adjourned until two o'clock, tomorrow afternoon.

THIRD DAY.

Sioux Falls, Dak., July 6th, 1889.

Two o'clock P. M.

The Hon. A. J. Edgerton, President, in the chair.

The President of the Convention: The Convention will be in order.

Prayer by the Chaplain as follows:

Our Father who art in Heaven, at the beginning of this session come we before Thee to ask Thy guidance and Thy care; we will thank Thee in every word, in every thought and in every deed, and may all be done to the good of Thy people and to Thy glory. Help us to remember that the fear of the Lord is the beginning of wisdom; and do Thou graciously bless us with the wisdom that will enable us to so direct, that ours shall be the credit and our posterity shall receive the benefit from this, our government, by us established. Give us Thy divine care, in Jesus name,

AMEN.

The President of the Convention: Reading of the Journal of yesterday.

The Chief Clerk read the Journal of yesterday.

The President of the Convention: Are there any corrections to be made in the Journal.

Hearing none the Journal is approved.

Mr. Coats, of Minnehaha, has not been sworn in, and if there is no objection he will now be sworn in as a member of this Convention.

The following oath was administered to Mr. Coats, of Minnehaha, by Joe Kirby, Esq., Notary Public.

You do solemnly swear that you will support the Constitution of the United States, and that as a member of this Convention, you, under the Act of Congress, enabling South Dakota to be admitted as a State of the Union, will well and faithfully discharge the duties of that office according to your best learning and dis-

cretion, with all good fidelity to yourself as well as to the people. So help you God.

The President of the Convention: I will ask the Clerk to read a communication received from the President of the Constitutional Convention of Montana.

The Chief Clerk read the communication as follows:

Helena, Montana, July 5th, 1889.

To Hon. A. J. EDGERTON:

Montana, standing on the threshold of statehood, reciprocates your cordial greeting, and indulges the hope that the Constitution which you have met to frame may be based upon the virtues and intelligence of the people, and when so framed, it may survive the years to come in all its vigor, unimpaired, until a hundred sovereign states have been erected into one confederacy, there to remain an indestructible and indissoluble union.

(Signed:)

J. K. TOOLE,
Temporary Chairman.

(Applause.)

The President of the Convention: What is the further business before the Convention? I am informed that there is a special order made for this afternoon at two o'clock.

Mr. Neill, of Grant: Mr. President, that was not set at any hour, and I think it should properly come in after the report of the Committee on Rules.

Mr. Caldwell, of Minnehaha: Mr. Chairman, has the roll been called?

The President of the Convention: The Chief Clerk will call the roll.

Mr. Neill, of Grant: Mr. Chairman, I move the calling of the roll be dispensed with.

The President of the Convention: It will be so ordered unless objection is made.

What is the further pleasure of the Convention?

Mr. Jolley, of Clay: Mr. President: Yesterday afternoon just before we adjourned, there was a motion made to postpone the consideration of the report of the Committee on Rules until today, and there was no hour specified at which the report should be taken up. The situation is this: The Committee made a partial report; the report of the number of employees they would ask to be appointed by this Convention, and a motion was made to adopt the report, and that is the question to come up at this time.

The President of the Convention: The report has been read to the Convention?

Mr. Jolley, of Clay: Yes, sir.

The President of the Convention: Is the Convention ready for the question?

Mr. Kellam, of Brule: Mr. President, there has been a diversity of views expressed upon this question of the number and the formation of this commission, and it might result in a discussion which would make a voluminous and expensive report to print. I therefore move that the Convention now go into committee of the Whole for the consideration of the report of the Committee on Rules, so far as made.

A Voice: I second the motion.

The President of the Convention: It has been moved that the Convention do now go into committee of the Whole for the consideration of the report of the Committee on Rules so far as made. Is the Convention ready for the question? Those of the opinion that the motion prevail will say aye; those opposed no. The motion is carried. I will call Mr. Sterling, of Spink, to the chair.

Mr. Sterling, of Spink, took the chair.

Mr. Price, of Hyde: Mr. Chairman, at this time I will call for the reading of the report of the Committee as presented yesterday.

The Chairman of the Committee of the Whole; The Clerk will read the report.

The report of the Committee on Rules, as submitted yesterday, was read by the Chief Clerk.

The Chairman of the Committee of the Whole: What will the Committee do with the report?

Mr. Jolley, of Clay: Mr. Chairman, I move that the report of the Committee be adopted.

A Delegate: I second the motion.

The Chairman of the Committee of the Whole: Gentlemen, you have heard the motion that the report of the Committee be adopted. Are you ready for the question?

Mr. Atkinson, of Brookings: Mr. President, I would like to move an amendment to strike out as much of it as authorizes them to employ a clerk, for the reason that there is no provision made to pay this clerk.

Mr. Jolley, of Clay: Mr. Chairman, I would like to change my motion. I move that this Committee be instructed to report to

the Convention and recommend that the report be adopted.

The Chairman of the Committee of the Whole: Exactly. There is no second to the motion to amend the motion.

Mr. Wood, of Pennington: I second the motion.

Mr. Jolley, of Clay: You second the amendment?

Mr. Wood, of Pennington: No, sir.

By the Chief Clerk of the Convention: Mr. Chairman, may I suggest that by the rules all motions and amendments shall be reduced to writing.

Mr. Jolley, of Clay: Yes, but not upon the suggestion of the Chief Clerk, Mr. Chairman, but by the President or any of the members! (Laughter.)

The Chairman of the Committee of the Whole: You have heard the motion and the amendment—

Mr. Wood, of Pennington: Mr. Chairman, I did not second the amendment but the motion.

The Chairman of the Committee of the Whole: Very well, I did not so understand it. The question is upon the motion to adopt the report of this Committee. Those of the opinion that the motion prevail will say aye; those opposed will say no.

The motion is carried.

Mr. Jolley, of Clay: Mr. Chairman, there is no instruction for this Chairman to report to the President as yet. I was just going to move that the Committee rise and report to the Convention and recommend that the report be adopted.

A Delegate: I second the motion.

The Chairman of the Committee of the Whole: It is moved that the Committee of the Whole now rise and report to the Convention and recommend that the report of the Committee on rules be adopted. Are you ready for the question? Those in favor of this motion will say aye; those opposed no. The ayes have it and the motion prevails.

The President of the Convention resumed the Chair.

Mr. Sterling, of Spink: Mr. President, I have to report to the President of the Convention that the Committee of the Whole have had under consideration and recommend to the Convention the adoption of the report of the Committee on Rules.

The President of the Convention: Gentlemen of the Convention, the Chairman of the Committee of the Whole, reports that the Committee of the Whole have had under consideration

and recommends to the Convention the adoption of the report of the Committee on Rules. Are you ready for the question? Those of the opinion that the motion prevail will say aye; those opposed no.

The ayes have it and the motion prevails.

The President of the Convention: I was not here yesterday. Did I understand the Chairman of the Committee on Rules to state that the Committee on Rules was ready to make a further report?

Mr. Jolley, of Clay: Yes, Sir, we are ready, Mr. President, to report when that order is reached. That report that has just been adopted was made a special order.

Mr. Sherwood, of Clark: Mr. President, there was another matter made a special order for this time.

The President of the Convention: Was there another special order, Mr. Clerk?

The Chief Clerk read from the Journal of yesterday, as follows: "Mr. Price moved the appointment of a commission of three to confer with a like commission from the Constitutional Convention of North Dakota, to definitely determine the boundary between the two states."

The President of the Convention: The time for the consideration of the special order has arrived.

Mr. Price, of Hyde: Mr. President, I desire at this time to withdraw that motion creating a special committee to consult with a like committee of the North Dakota Convention, with the consent of the second.

A Delegate: I consent to it.

Mr. Price, of Hyde: Mr. President, now Sir, I desire to move that the whole matter relating to boundary be referred to a special committee to report to this Convention as soon as they can, and that that committee be empowered to send for persons and papers, or the Surveyor General or anybody else they desire to consult in regard to the matter.

A Delegate: I second that motion.

Mr. Neill, of Grant: Mr Chairman, I am opposed to raising special committees where it properly falls within the channel of the regular committee. We have been anticipating these matters somewhat and we have adopted our standing committees. The report will soon be made. This matter can be referred to the proper

committee. I move you that this entire matter be referred to the regular standing committee when it is appointed,

Mr. Price, of Hyde: I accept the amendment Mr. Chairman.

By the President of the Convention: It is moved that the question of boundary be referred to the standing Committee on Boundaries. Are you ready for the question? Those of the opinion that the motion prevail will say aye; those opposed say no.

The ayes have it and the motion prevails.

The question of boundaries is referred to the Committee on Boundaries.

The President of the Convention: I understand that the Committee on Rules is ready to make their further report.

Mr. Jolley, of Clay: Mr. President, the Committee on Rules have instructed me to make their report—in fact they make the report themselves. This morning at the meeting of the Committee this report was read and signed by all the members. Since it has been signed, on Rule No. 11 there will be a minority report. The rules as ordered reported by the Committee are as follows:

Here Mr. Jolley read the report of the Committee on Rules with reference to the number of members to constitute the joint commission, and the introductory part of the report of the same Committee, with reference to standing committees.

Mr. Jolley, of Clay: (Continuing.) With reference to this first committee, the Committee on Judiciary, touching members, the understanding of the Committee, which of course does not bind the Convention, was that two members should be appointed from each Judicial District, as provided for in the Sioux Falls Constitutional Convention (1885) and one at large.

(Mr. Jolley here proceeded to read the report of the Committee with reference to rules for the government of the proceedings of the Convention.)

This Rule 11 is the rule in which there is a disagreement of the Committee. (Reading Rule 11.)

Mr. Wood, of Pennington: Mr President; I think the Chairman of the Committee is under a misapprehension. There was a suggestion made by a member of the Committee to amend so far as related to our report on Rule 11, but on the matter being presented individually to the members, the minority concurred with the majority. I think the Chairman misunderstood what was said. We all concurred in the report.

Mr. Jolley, of Clay: I certainly misunderstood.

The President of the Convention: I understood the Chairman of the Committee on Rules to move the adoption of the report.

Mr. Jolley, of Clay: I so intended. I move that the report of the Committee on Rules be adopted.

The President of the Convention: It has been moved that the report of the Committee on Rules be adopted. Are you ready for the question?

(The motion was seconded.)

(Cries of question, question!)

Mr. Wescott, of Deuel: Does this adopt the report without further discussion?

The President of the Convention: I simply asked if the Convention was ready for the question.

Mr. Wescott, of Deuel: I desire to move to amend, by reading these rules section by section, after which, if there is no objection made, they will be considered as adopted, and so on to the end. And if no objection is made at once, that the rules be adopted.

Mr. Jolley, of Clay: The rules as reported were the rules that governed the Constitutional Convention of 1885. These rules as reported here were substantially the same.

Mr. Wescott, of Deuel: Mr. Chairman; I don't doubt that, but I don't think we can with only one reading intelligently comprehend them. If my motion is seconded, I hope the House will sustain me.

A Delegate: Well, I'll second your motion.

Mr. Huntley, of Jerauld: There is one little thing in the rules, Mr. President, it seems that two members may demand a roll call, and we may be kept here a very long time. It ought at least require five. I move in that particular an amendment that it be changed from two to five.

The President of the Convention: It is moved by the Chairman of the Committee on Rules that the report be adopted. It is moved by the delegate from Deuel that the rules be read section by section and that each rule be acted upon separately. Is the Convention ready for the question on the amendment of Mr. Wescott, of Deuel?

A Delegate: I did not understand the motion was seconded.

The President of the Convention: It was seconded. The question is now upon the amendment by the gentleman from Deuel

County that the report shall be read rule by rule and adopted by the Convention. Is the Convention ready for the question? As many as are of the opinion that the amendment be adopted say aye; those of the contrary opinion say no. The noes appear to have it. The noes have it.

Mr. Huntley, of Jerauld: Mr. President, I move that the rule be amended so as to require five members to call for a roll instead of two.

(The amendment was seconded.)

Mr. Clough, of Codington: Mr. President, we studied that matter somewhat, and we believe that the ends of justice might sometimes be reached better upon the call of two members, rather than five.

Mr. Jolley, of Clay: Mr. President; if I was afraid to make any record here so that the boys who sent me would not know it, I would make it ten instead of two.

Mr. Neill, of Grant: The moving of any motion to get it before this House requires two members. There is then no difference between an ordinary motion and the calling of the yeas and nays on any question, under these rules. We might find ourselves annoyed very much by some captious member or two. I think five is certainly a very low limit, and I hope this amendment will prevail.

The President of the Convention: The question before the Convention is on the amendment of the gentleman from Jerauld. The recommendation of the Committee is that two delegates may call for the roll. The amendment is to strike out "two" and insert "five". Are you ready for the question? Those of the opinion that the amendment prevail will say aye; those opposed say no. The Chair is unable to determine. Those in favor of the amendment will rise and stand to be counted. You may now be seated. Those of the contrary opinion will rise and stand to be counted. Be seated.

The Secretary announced that there were in favor of the amendment, 30 ayes, and against the amendment 42 noes.

The President of the Convention: So the amendment is lost. Are there any further amendments? The question now recurs on the original motion that the report of the Committee be adopted. Is the Convention ready for the question? Those of the opinion that the motion prevail will say aye; those opposed say no. The

ayes have it, and the report of the Committee on Rules is adopted.

What is the further pleasure of the Convention?

Mr. Spooner, of Kingsbury: Mr. Chairman, I notice that there are in the city, and perhaps in this audience, some who have been members of both of the prior Conventions, namely, Hon. H. J. Campbell, and Hon. G. C. Moody, and I move you that they be accorded the courtesies of the floor.

A Delegate: I second the motion.

The President of the Convention: It is moved that all members of the two Constitutional Conventions, of 1883 and 1885, be accorded the privileges of the floor. Those of the opinion that the motion prevail will say aye; those of the contrary opinion will say no. The ayes have it and the motion prevails.

Mr. Neill, of Grant: Mr. Chairman, I move you, Sir, that Ivan W. Goodner, of Huron, and Theron G. Brown, of Sioux Falls, be employed as stenographers of this Convention, according to the provisions made in the report of the Committee on Rules.

Mr. Hole, of Beadle: I second the motion.

The President of the Convention: It is moved that Ivan W. Goodner, of Huron, and Theron G. Brown, of Sioux Falls, be employed as stenographers of this Convention. Is the Convention ready for the question? Those of the opinion that the motion prevail will say aye; those of the contrary opinion will say no. The ayes have it and Mr. Goodner and Mr. Brown are elected the Stenographers of this Convention.

Mr. Caldwell, of Minnehaha: Mr. President; it is desired by the parties having charge of the printing of the Convention that the Convention will indicate the probable number of finished copies of the Journal they will have printed. It is necessary that the type set for the Daily Journal shall be so arranged as to make a complete book, when it shall be printed day by day, and this Journal—the completed Journal, as I understand it, is furnished from the appropriation which has been made for the expenses of the Convention, and it is desirable that there shall be at once an indication as to how many copies will be needed.

The President of the Convention: If the gentleman makes no motion, there is nothing before the Convention.

Mr. Caldwell, of Minnehaha: I desire that someone who has better ideas in regard to this than I have should make this motion. I merely ask on behalf of the Secretary of the Territory and on

behalf of the printers of the Journal that there shall be an indication as to this matter.

Mr. Neill, of Grant: Mr. President, I move you, Sir, that there be 500 bound copies printed of the Journal.

Mr. Caldwell, of Minnehaha: I doubt, if it be the object of the gentleman to furnish them for the use of the Convention—

Mr. Neill, of Grant: Yes, Sir.

The President of the Convention: Is the Convention ready for the question? I would suggest that this had better go to a committee, from the fact that we only have a limited amount of money. As I understand we are restricted in the amount which shall be used for the printing.

Mr. Caldwell, of Minnehaha: Yes, Mr. President, that is so. There is only \$3750 for the two Conventions, as I remember the amount.

Mr. Davies, of Edmunds: Mr. President, I move as an amendment that this be referred to the Committee on Printing.

The amendment received a second.

The President of the Convention: Is the Convention ready for the question?

Mr. Caldwell, of Minnehaha: Mr. President, it is very necessary that this matter be determined at a very early time, because the accumulation of type for the Daily Journal saps the facilities of the printing institution so that it is necessary that it be determined very soon.

Mr. Wescott, of Deuel: Mr. Chairman, I move as an amendment that it be fixed at 300 instead of 500.

The President of the Convention: The question is upon the motion to refer to the Committee on Printing. The motion prevailed and the subject was referred to the Committee on Printing.

Mr. Jolley, of Clay: Mr. President, I move you, Sir, that 300 copies of the rules that have just been adopted be printed for the use of the members of the Convention.

Mr. Kellam, of Brule: I move as an amendment to make it 150.

Mr. Jolley, of Clay: Mr. President, all I have to say is this: The reason why the Committee has been twenty-four hours in reporting is from the fact that we have hunted from one end of the Territory to the other so as to find the printed rules and not make it necessary for us to write them out.

A Delegate: Mr. Chairman, I wou'd favor the amendment that 150 be the number. It sounds better anyhow.

The President of the Convention: The question is upon the amendment by the gentleman from Brule that the number be fixed at 150. Is the Convention ready for the question?

Mr. Caldwell, of Minnehaha: Mr. President; of course the report of this Committee will go in the Journal and there are sufficient numbers of the Journal to furnish to members the text of this report; and it seems to me it would be a wise thing to either dismiss the text of this report from the Journal or else vote down a proposition to print the report separately.

The President of the Convention: The question is on the amendment of the gentleman from Brule that the number be fixed at 150. Those of the opinion that this motion prevail will say aye; those of the contrary opinion say no. The ayes appear to have it. The ayes have it.

(Cries of "Division, division".)

The President of the Convention: It is moved that 300 copies of the Rules be printed for the use of the Convention alone; and to that motion Mr. Kellam, of Brule, proposes an amendment that only 150 copies be printed for the use of the Convention, and it is upon the adoption of that amendment that the Convention is called upon now to act. Now, as many as are in favor of the amendment that only 150 copies be printed, rise and stand to be counted; those of the contrary opinion rise and stand to be counted. There are 49 ayes and 22 noes, so that the amendment is adopted. The question now recurs upon the original motion as amended, that is, that 150 copies of the Rules be printed for the use of the Convention.

Mr. Harris, of Yankton: Mr. President, I move an amendment by inserting after the word "Rules of the Convention", the words, "and list of the standing committees."

A Delegate: I second the amendment.

The President of the Convention: The question is upon the motion that 150 copies of the Rules be printed. Mr. Harris, of Yankton, moves an amendment that—

A Delegate: Mr. President, I move as a substitute that there be printed of the regular Journal instead of these 150 extra copies of the rules, 300 copies of that Journal giving the rules and the names of the committees.

The President of the Convention: It is suggested to me that under one of the rules this is not in order, but I will not raise it if it is not raised by anyone.

Mr. Kellam, of Brule: Mr. President, I do not care about this, but the names of the members of the committees will not appear on the Journal that contains the report. I understood the motion of Mr. Harris to be that this same copy of the Rules should contain the names of the standing committees. That is the only information we care about. We don't care what standing committees there are, but we want to know what members are on the several committees, so that this motion will not meet the end. The standing committees are not yet announced, and the Journal of today will give us no information upon that subject.

The President of the Convention: It is moved that 150 copies of the Rules be printed for the use of the Convention. Mr. Harris moves an amendment that the members of the committees, as I understood—that is, the list of the standing committees, should be printed at the same time. It is moved as a substitute that this all be printed in the Journal of today. In other words, if I understand the question, it is that no extra copies of the rules be printed, and no extra copies of the list of standing committees be printed except that contained in the Journal of today, and that 300 copies of the Journal of today be printed.

Mr. Peck, of Hamlin: Mr. President, I fail to understand how we are going to get a list of the names of the members of the committees today, inasmuch as they will not be named by yourself. I fancy we can get enough if we can get 300 copies of the Journal of today and of the Journal upon the day after the names are announced.

Mr. Caldwell, of Minnehaha: The amount for the printing is \$3,750 for the two Conventions as I am informed by Secretary Richardson, and it will probably be necessary to economize somewhat in the matter of printing, and the motion which has been offered as a substitute is a step in that direction, and I therefore hope that it will be adopted.

The President of the Convention: I will state the question again; it is in effect that no rules and no list of the standing committees be printed except as they occur in the Journal of today, and that 300 copies be printed.

Is the Convention ready for the question? Those of the

opinion that the motion prevail will say aye; those of the contrary opinion say no. The ayes appear to have it. The ayes have it.

I was in hopes that some member would suggest to the Convention, that it would be perfectly impossible to carry out that order. I cannot announce those committees today.

Mr. Dickinson, of Day: It was not my idea that the names of the committees be published but simply the list of the committees; but whenever the committees are named they will also appear, and we can have 300 copies of the Journal of that day with the names of the members.

Mr. Humphrey, of Faulk: I move that the President of this Convention be instructed to inform the Constitutional Convention of North Dakota by telegraph that the Constitutional Convention of South Dakota has provided for a joint commission of seven to agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and to adjust and agree upon the amount of debts and liabilities of the Territory, and request that a like commission be appointed by the Constitutional Convention of North Dakota.

A Delegate: I second the motion.

The President of the Convention: It is moved that the President of the Convention, by telegram, inform the Constitutional Convention at Bismarck of the action of this Convention with reference to the joint commission.

Mr. Neill, of Grant: Mr. President, I believe we gave our committee authority to act on that subject. If that is not the understanding that the committee has we simply wish to know it. I do not wish to take any action here that would be discourteous to that Committee.

Mr. Humphrey, of Faulk: Mr. President; the motion finally referred to the Committee on Rules was to the effect that a special committee be appointed to communicate with North Dakota and ask them how many they wanted on the commission and when they should meet. The Committee thought it would be hardly proper—we thought it would be more compatible with the dignity of South Dakota that the President of this Convention should notify them, instead of the Committee on Rules.

Mr. Wood, of Pennington: Mr. President; in that we assume or arrogate to ourselves the right to direct North Dakota to appoint the same number that we have, seven. Now, we get the right to

appoint this commission from the same source that they do. With that exception I think the motion is all right. It would be better for us not to put this motion in this form, I think. We ought not to suggest to North Dakota what to do at all. The law is in operation there as well as here. I move to amend by striking out that portion of the motion requesting them to appoint a like commission consisting of a like number.

A Delegate: I second the motion.

Mr. Humphrey, of Faulk: Mr. President, I accept the amendment.

The President of the Convention: Do I understand the gentleman to accept the amendment in full or only so far as the number is concerned.

Mr. Wood of Pennington: I think it was accepted only so far as the number is concerned.

The President of the Convention: It is moved by Mr. Humphrey, of Faulk, that the President of the Convention be instructed to notify the Constitutional Convention of North Dakota, by telegraph, that the Constitutional Convention of South Dakota had provided for a joint commission of seven, and that they be requested to appoint a like number to confer with them. To this Mr. Wood, of Pennington, moves an amendment that all that part of the resolution requesting the Constitutional Convention of North Dakota to appoint a like number be stricken out.

Mr. Humphrey, of Faulk: I accept the amendment with the consent of my second.

The President of the Convention: Is the Convention ready for the question?

A Delegate: I accept the amendment.

The President of the Convention: The question then recurs upon the original proposition that the President of this Convention notify the Constitutional Convention at Bismarck, by telegram, that this Convention has adopted a resolution providing for the appointment of a joint commission of seven to assemble at Bismarck. As many as are of the opinion that this motion prevail will say aye; as many as are of the contrary opinion say no. The ayes appear to have it. The ayes have it.

Mr. Young, of Lake: Mr. President, it is very evident to the majority of the members here that we are laboring under very serious inconvenience from lack of copies of the Omnibus Bill and

of the Constitution. I will, therefore, move you that 100 copies of the Omnibus Bill be requested of the Secretary of the Interior of the United States, and that 100 accurate copies of the engrossed copy of the Sioux Falls Constitution be furnished for the use of the members of this Convention.

Mr. Price, of Hyde: Mr. Chairman, I move to lay that motion upon the table. This Omnibus Bill has been printed by the Argus-Leader, and numerous other papers in the Territory, and it would take until after this Convention has adjourned before we could get it anyhow.

Mr. Lee, of Spink: Mr. Chairman, I think that is very wise. Most of us have brought it with us anyway.

Mr. Young, of Lake: Mr. President; there seems to be some question about the legitimacy of the form of the motion; but its importance is such that if it cannot be disposed of finally at this time I would ask the unanimous consent of the Convention to withdraw it until Monday, and then put it in such a form that it can go through.

The President of the Convention: The Chair hears no objection and consent is given.

What is the further pleasure of the Convention?

A Delegate: Mr. President, I move that we now adjourn until Monday at two o'clock.

A Delegate: I second the motion.

The President of the Convention: It has been moved that the Convention do now adjourn until Monday at two o'clock. Those of the opinion that the motion prevail will say aye; those of the contrary opinion say no.

The ayes have it, and the Convention stands adjourned until Monday next at two o'clock P. M.

ADJOURNED.

FIFTH DAY.

Sioux Falls, Dakota, July 8th, 1889.

Two o'clock P. M.

The Convention assembled pursuant to adjournment.

Prayer was offered by the Chaplain as follows:

Oh Thou God of hosts, we thank Thee for the privilege we enjoy of life, liberty, and the pursuit of happiness; and we would ask Thee that Thou wilt help us, that we so conduct the affairs that are placed in our hands, that the world shall be better that we have lived therein. These favors we ask, and Thy continued favor, in Jesus' name,

AMEN.

After the reading of the Journal had proceeded some little time Mr. Caldwell moved that further reading of the Journal be dispensed with.

Which motion prevailed.

Mr. Kellam: As I remember the motion of Mr. Jolley, (of Clay) for printing three hundred copies of the rules was disposed of; I understood that there was an amendment, or substitute carried?

Mr. Caldwell: There are several of the members, (myself among the number) who have not yet received today's Journal at the desk.

Voices from different parts of the house: "None here".

Mr. Dickinson: The mover of that substitute as given by the Journal, is a name I do not recognize as a member of this Convention. It should read Dickinson,—not Harris.

The President: The Clerk will note the correction.

Mr. Caldwell: I believe it is the ordinary practice, and would certainly be well in this instance at least, in order to prevent encumbering the Journal, with motions which may be made and not carried, that such motions shall not be entered upon the minutes;

unless the motion made has reference to a subsequent action. Where a motion is merely made and not carried, I suggest that they be omitted from the records.

The President: You now move that hereafter the Clerk be required to omit from the Journal, the motions that are made and lost, that they do not really become the proceedings of the body; would not it be well to refer that to the Committee on Rules.

Mr. Caldwell: I was suggesting merely, parliamentary practice of deliberative bodies, without any rules.

The President: The next order of business is communications and presentations of petitions.

Mr. Caldwell: If it will be in order to make a verbal communication under this order of business I would, on behalf of the Commissioner of Immigration of the Territory, state that he has forwarded to me several copies of a map of North Dakota, and also maps of South Dakota for distribution to the members; and likewise copies of these hangers (Indicating.) These are from his office and there is one for each member of the body; and also the Secretary has forwarded to me a copy for each member of Long's Legislative Handbook, containing a copy of the Sioux Falls Constitution and a large amount of statistics which will be desirable for this body to have, and that he requested me to have them distributed.

Mr. President: Under the order of unfinished business of the preceding day, I will state to the Convention that I have not been able to complete,—fully complete the list of the committees; I will have it tomorrow at the session of the Convention. I can only announce the committee that will go to Bismarck. The committee forming a part of the joint commission to proceed to Bismarck under the Omnibus Bill, is Mr. Kellam, of Brule; Mr. McGillicuddy, of Pennington; Mr. Neill, of Grant; Mr. Caldwell, of Minnehaha; Mr. Elliott, of Turner; Mr. Price, of Hyde; and Mr. Brott, of Brown.

Mr. Coats: My business was such that it was impossible for me to be present at the first two days' meeting of this Convention; I shall be obliged to ask to be excused and have it so appear upon the record.

The President: If there is no objection, it will be so ordered. The Chair hears no objection; it is so ordered.

The President: The Chair appoints Charles C. Walts and Albert J. Keith, as Pages.

Mr. Jolley: I make the report verbally that the Committee on Rules, ask that Rule 43, page 4, as published in these proceedings, be amended by striking out the words "two pages" and inserting in lieu thereof, the words "three pages". The Committee arrived at this conclusion for this reason to give a page to this side of the hall and an extra Page for the presiding officer of this Convention, and the officers. I move you that the words "two Pages", in line four, of Rule Forty-three, be stricken out and insert in lieu thereof, the words "three Pages".

Which motion prevailed, and the Rule was declared so amended.

Mr. Price: The members on this side of the hall have not been furnished copies of the Journal.

The President: Only a few copies have been received from the printers.

Mr. Price: It is a small matter, but the Journal reads in line 31, page 9, that Mr. Coats moved the motion with relation to procuring 100 copies of the Omnibus Bill, be tabled; that should appear Mr. Price, instead of Mr. Coats.

The President The Clerk will make the necessary change.

Mr. Caldwell: I would ask if there has been any direction yet to the Commission to go to Bismarck, as to the time it shall go.

The President: I sent the communication ordered by the Convention, on Saturday, to the President of the Constitutional Convention at Bismarck; it probably went so late that he did not receive it until after the adjournment of the Convention on Saturday; I have received no answer as yet.

Mr. Young: As we are forming a document here, the importance of which is so great that it is absolutely necessary that it be correct in every detail, and although I do not know as to the quality of the copy in Long's Legislative Manual, I do know that these copies that have been distributed by the Central Committee and the copy in the Argus-Leader are different, greatly; I notice in Section Five, of Article Eight, that there is a discrepancy in regard to three words in one section; now I do not think that such copies are right copies to have as a basis of our work, therefore, I resubmit the following resolution:

RESOLVED, That a committee of five be appointed whose duty it shall be to procure from the President the original and authentic

engrossed and certified copy of the Constitution, and procure the same to be carefully and correctly copied, and to have the same carefully and correctly printed under their supervision and laid upon the desks of the members, and the same committee be instructed to procure and place upon the tables of the members carefully and correctly printed copies of the Enabling Act, under which this Convention has assembled; the same committee be also instructed to procure from H. M. Avery, the assistant secretary of the last Convention, the engrossed copy of the Constitution in his possession, and that the same committee be instructed to carefully compare said copies with a view to the correction of any mistakes.

Mr. Young: I move the adoption of that resolution.

Mr. Dickenson: I second the motion.

The President: Do you mean the engrossed copy or the enrolled copy? Under the authority of the last Convention it was committed to my custody and has remained there until today.

Mr. Young: I was instructed there were two copies; one in your possession and one in the possession of Mr. H. M. Avery.

The President: I cannot tell what Mr. Avery has; I have the original copy; the only copy that can be authority anywhere; that was committed to me by the Convention, and ordered by the Convention to be kept by me, until it was deposited with the Secretary of State of the state to be. My intention was to present that at some proper time to this Convention, as I believe now it belongs to and should be the property of this Convention. As I said before, the original enrolled bill, I have just as signed by the members of that Constitutional Convention. I only make this suggestion for the information of the members of the Convention.

Mr. Peck: Not having been furnished the Journal of Saturday, in which the several committees were named, I have no way of knowing whether a committee was appointed on Constitution; I presume in that connection that the Committee is to correct that Constitution; we have parted with our rights as a Convention to correct that Constitution except through that Committee; and we require of the Committee to get such information as will enable them to give us a correct copy of the report.

Mr. Caldwell: It occurs to me that the necessities of the case are scarcely sufficient to warrant the printing of another Constitution. It seems to me that if the Chairman should have the official copy of the Constitution it would be possible to thereby indicate to this Convention the changes which the Committee

might deem to be necessary, by comparison with this copy of Long's Legislative Handbook,—that the Convention would then have in its possession, that which would enable it to understand what it has got to do in the work before it. The time required to print a sufficient number of copies from this enrolled copy of the Constitution would be greater than the benefits to be derived from it would amount to. I would therefore oppose the motion as it is made.

Mr. Sterling: I simply wish to say that I agree with the speaker last upon the floor in this respect. It seems to me that with the official copy here, such as I understand the Chairman to say he has, a comparison can be readily made with the copies that we have at our desks; it can be ascertained whether the copies are true or not, while we have the original here and the time and expense would be both saved. I would oppose the resolution.

Mr. Young: It seems to me a misapprehension that some are laboring under is this: The Committee will have this perfectly correct copy to work with in making their reports; I would for that reason supply them with copies that they might work with uniformity,—so that the comparison might be made by one committee instead of every committee.

Mr. Peck: I have since my remarks been served with a copy of the Rules; I find committee twenty-three are appointed for revision and correction of the Constitution; I understand that they have that in hand, and one copy will be quite sufficient for seven men to make the correction from, I fancy.

The resolution reaching a vote of the Convention, was lost.

Mr. Dickenson: Referring to the top of the ninth page of the Journal, Mr. Neill of Grant, moved that five hundred "bound" copies of the Journal be printed instead of five hundred "extra" copies. That motion was referred to the Committee on Printing.

The President: Mr. Dickenson asks that the Journal be corrected by striking out the word "extra" and inserting the word "bound".

Mr. Caldwell: With regard to this matter I would like to urge the necessity of prompt action on the part of the Committee on Printing in determining the number of bound volumes the Convention will desire; there are certain mechanical questions involved as to the facilities for doing the printing, and if it is possible for

this Committee to determine pretty near about it, it will greatly facilitate the matter of providing the Journal.

The President: It will be pretty difficult for the Committee to act until they are appointed.

Mr. Caldwell: It WILL be pretty difficult! (Laughter.)

Mr. Neill: I think when it comes to be left to the Committee on Printing, to determine the number of copies, that they will be as much at sea as the Convention now is, in recommending the number. This Convention might just as well settle the number of copies at once, as to do it at a later date, and therefore to bring this matter before the Convention and have it decided, I move you that five hundred bound copies of the Journal be printed; that is of the complete Journal.

Mr. Jolley: Can you entertain that motion while this matter has already been sent to a Committee?

The President: Not if any objection is made.

The President: The Chair hears no objection.

Mr. Spooner: I rise to a point of order; it is not the proper motion to submit; there was a previous motion referring the matter to the Committee on Printing.

The President: The gentleman from Kingsbury raises the point of order that on Saturday some motion was before the Convention and the Convention referred the matter to the Committee on Printing; the Chair is of the opinion that the point of order is well taken.

Mr. Caldwell: If it is not to be regarded as discourteous to a committee not yet in existence (laughter) I would move that the matter of bound copies, be withdrawn from the Committee on Printing and again brought before the House, for consideration.

Mr. Peck: I will gladly second that if in order; can probably facilitate the work of the Committee, if we can give them such consideration.

Mr. Caldwell: It is suggested that it would make the Journal in better form if the motion referring this to the Committee on Printing, be reconsidered; I would by consent of the House, withdraw the previous motion, substituting therefor, the motion to reconsider the vote by which the subject of bound copies of the Journal was referred to the Committee on Printing.

Which motion prevailed.

Mr. Neill: The motion I believe before the House, is the one

made Saturday, that five hundred bound copies of the Journal be printed for the use of the Convention; am I right?

The President: Yes, Sir.

Mr. Neill: Mr. President; my reason for making that the number of bound copies is this: We will get five hundred about as cheaply as we will get three hundred, because the greater part of the expense in getting up a book of that kind comes in the first three hundred or five hundred. Yet we do not wish to act with extravagance that would require us to modify that order. I think we should order the largest limit compatible with the needs, and with the expenses that this Convention could well afford to pay. I, for these reasons, move that we have five hundred copies of the bound volume of the Journal. I do not think that three hundred copies would be as satisfactory as five hundred; it would only make something like five or six to each of us.

Mr. Peck: I would second that if the mover would designate his manner or recommendation of dividing those; how they will be distributed.

The motion of Mr. Neill, (of Grant) prevailed.

Mr. Peck: I would make a resolution supporting the same thing; that six copies be given to each member of this Convention, and the balance remain in the Parliamentary Library for further use.

Mr. Caldwell seconded the motion.

Mr. Caldwell: I would suggest the correction of the motion as I intended it; I didn't intend "Parliamentary Library".

Mr. Peck: That simply shows where I came from, that is all. (Laughter.)

By rising vote the motion prevailed.

Mr. Goddard: It seems to be necessary for me to be absent tomorrow; I ask to be excused.

The President: If there is no objection, the member will be excused tomorrow; the Chair hears no objection.

The President: I think I shall be able to announce the committees tomorrow at two o'clock; I had hoped to do it today. It has been more difficult than I at first supposed possible to entertain all the conflicting interests and claims of members and localities; therefore, I have to claim the indulgence of the Convention for another day.

Mr. Price: I move we do now adjourn until tomorrow at two o'clock.

Which motion prevailed.

The President: I announce the name of Frank E. Clough, as the third Page of this Convention.

SIXTH DAY.

Sioux Falls, Dakota, Tuesday, July 9th, 1889.

Two o'clock P. M.

Convention called to order by the President, in the chair.

Prayer by the Chaplain as follows:

O God, our Heavenly Father, we ask Thee that Thou wilt be with us individually; that our every act may be such as to meet the approval of all the others in this Convention, and may we as a whole so administer the affairs placed in our hands as to meet with Divine approval; and may we in voicing the sentiments of the people that have sent us, also voice the will of God. In Jesus' name we ask it,

AMEN.

Reading of the Journal of yesterday.

The President of the Convention: Are there any corrections of the Journal?

Mr. Clough, of Codington: Mr. President; ought it not to be the fifth instead of the fourth day? I ask the question for information.

The President of the Convention: I don't know myself what the rule is in making up a Journal. I never made up a Journal, but the rule for conventions and legislatures is that they count from the first day to the last, including Sundays.

Mr. Caldwell: Mr. President, I would say that it is the practice, so far as the Territory is concerned, to skip Sunday and to make the Journal show the number of days of the session so that yesterday would have been the fifth day.

Mr. Clough, of Codington: I move, Mr. President, that it be changed to the 5th day instead of the 4th.

The President of the Convention: If there is no objection, it will be so ordered, and the Clerk is ordered to make the correction.

Mr. Neill, of Grant: In the minutes of yesterday there is a mistake in the name of Neill—

A Delegate: On the second page, third line, in agreement with the suggestion of the gentleman from Clay, made a few days ago, in favor of not cumbering our records and of having them accurate I think they ought to change the words "two Pages" to the word "two" and the words "three Pages" to "three", in the interests of accuracy.

Mr. Jolley, of Clay: If the gentleman will read on further be will find the words "two dollars" also, and he will discover that it is necessary that this be left as it is, in order to prevent mis-understanding.

The President of the Convention: I would say that I think the Clerk has recorded the motion as the Chairman of the Committee on Rules made it. If it is a mistake, it is a mistake of the Convention in passing the resolution of the Chairman of the Committee on Rules.

Mr. Jolley, of Clay: There is no mistake made, either by the Chairman of the Committee or by the Convention, your honor—Mr. President, I mean—I thought I was trying a case before your honor! (Laughter.) If the word changed was simply the word "two" we wouldn't know whether it was the words "two dollars" or "two Pages". The Committee instructed me to insert the words "two Pages".

The President of the Convention: I suggested that if there was any mistake it was the mistake of the Committee and of the Convention, and not of the Clerk.

Mr. Caldwell, of Minnehaha: Mr. President, as this Journal is making history, and as those connected with it would like to be right, I would say that it is H. M. Avery instead of H. A. Avery.

I believe also that it is the custom of the Clerk to sign each day's proceedings and have it appear upon the Journal.

The President of the Convention: If that is the rule then it is my mistake. It is one continuous session; I never saw it so in my life. The Convention will probably adopt the recommendation of the Committee on Rules in that respect. I would suggest here-after that any mere clerical error of that kind be suggested to the Clerk, and he make the entry, as he will at once, on the Journal. It is not necessary to take either the time of the Convention nor to encumber the record; a clerical mistake of that kind will be

corrected at once by the clerk.

Mr. Atkinson, of Brookings: Mr. President, I would inquire if it is the intention to have the word "Territorial Library" here, or "State Library", at the bottom of the page. The point is whether we intended to have it in that way we have it here. The motion was that they should be deposited in the "Parliamentary Library", and that was corrected and made State Library.

Mr. Peck, of Hamlin: You simply did not adopt my suggestion and got it worse, that's all! (Laughter.)

The President of the Convention: I will now submit the list of Committees. Perhaps I should say to the Convention that I have no hope—no expectation that the committees will suit every member of the Convention. It has been rather of a laborious duty to have all the different locations satisfied and to have the different interests in the Convention made content; and it has been impossible to so make up the list that everyone would be satisfied. The Clerk will read the list of committees.

(The Chief Clerk here read the appointment of committees.)

The President of the Convention: What is the further pleasure of the Convention?

Mr. Williams, of Bon Homme: Mr. Chairman, if it is in order at this time, I have a petition I would like to present. This petition comes from a religious society in Bon Homme County, setting forth their views as belonging to what is known as the non-resistant sect—setting forth their privations in Russia, their sacrifices in property, and their emigration to America, and asking that this Convention incorporate into the Constitution an exemption from military duty; which resolution I move be received and referred by the President to the appropriate committee.

The President of the Convention: It will be so ordered unless objection is made. Have you any suggestion as to the committee?

Mr. Williams, of Bon Homme: Mr. President, I think it would be proper to refer it to a committee on military.

Mr. Kellam, of Brule: Mr. President, if in order at this time I desire to present a resolution and move its adoption. Perhaps I can read it more readily than the Clerk:

WHEREAS, By resolution of this Convention authorizing the same, the president of this Convention has named and appointed as the members of the joint commission on the part of South Dakota to agree upon an equitable division of the property belonging to the Territory of Dakota, the disposition of all public records, and

adjust and agree upon the amount of debts and liabilities of the Territory, which should be assumed and paid by each of the States of North Dakota and South Dakota, the following named members of the Convention, to-wit: A. G. Kellam, V. T. McGillicuddy, Henry Neill, E. W. Caldwell, William Elliott, C. H. Price, S. F. Brott. Now be it

RESOLVED, That the aforesaid appointment by the President be, and the same is, by this Convention hereby adopted and in all things confirmed.

Mr. President, I move the adoption of the resolution.

Mr. Hole, of Beadle: Mr. President, I second the motion.

The President of the Convention: The question is upon the adoption of the resolution just made by Mr. Kellam, of Brule, is the Convention ready for the question? Those of the opinion that the resolution be adopted will say aye; those of the contrary opinion say no. The ayes have it and the resolution is adopted.

Mr. Clough, of Codington: Mr. Chairman, if it is in order I move that the motion requiring the Secretary to furnish 200 copies of the daily minutes be reconsidered, and that 500 be ordered printed.

Mr. Lee, of Spink: Mr. Chairman, I second the motion.

The President of the Convention: I would suggest to the gentleman from Codington that possibly the motion to reconsider be first made.

Mr. Clough, of Codington: I move to reconsider the motion. The reason is that newspapers all about are asking for copies.

A Delegate: I second the motion.

The President of the Convention: It has been moved and seconded to reconsider the motion requiring the Secretary to furnish 200 copies daily of the Journal. Is the Convention ready for the question?

Mr. Price, of Hyde: Mr. President, I am in favor of that motion, but I move an amendment that the Chief Clerk be instructed to lay upon the desk of each member a certain number of copies each morning.

The President of the Convention: Is the Convention ready for the question?

Mr. Caldwell, of Minnehaha: Mr. President, I rise to the point of order that more than two days have elapsed since the motion was made, and it cannot be reconsidered.

Mr. Jolley, of Clay; Mr. President, the rules require that two business days—yesterday was Monday and this is Tuesday.

Mr. Caldwell, of Minnehaha: Mr. President, I sit down! (Laughter.)

Mr. Wescott, of Deuel: Mr. Chairman; is is not possible that having ordered 200 on the previous day, we can order 200 more today.

The President of the Convention: The question is upon the motion to reconsider. Is the Convention ready for the question? Those of the opinion that the motion prevail will say aye; those of the contrary opinion will say no. The ayes have it and the motion prevails.

Mr. Clough, of Codington: Mr. Chairman, I move that the Chairman of the Committee on Printing be directed to secure 500 copies and that six copies be laid on the desk of each member.

Mr. Atkinson, of Brookings: Mr. President, I move an amendment to the motion by making it the duty of the Messenger to do this distributing. (Great Laughter.)

Mr. Wood, of Pennington: Mr. President, it seems to me that the motion ought to provide for their being delivered before the session each day,

Mr. Clough, of Codington: I accept the amendment.

The President of the Convention: Is the Convention ready for the question? As many as are of the opinion that the motion be so amended say aye; those to the contrary say no. The ayes have it.

As many as are of the opinion that the motion prevail, as amended, say aye; those of the contrary opinion say no. The ayes have it and the motion prevails.

Mr. Zitka, of Bon Homme: Mr. President, I move you that the Constitution of 1885 be ordered read in this Convention tomorrow for the purpose that the different portions thereof may be referred to the appropriate committees.

A Delegate: Mr. President, I second the motion.

The President of the Convention: It has been moved that the Constitution of 1885 be read in this Convention tomorrow in order that the different portions thereof may be referred to the appropriate committees. Is the Convention ready for the question? As many as are of the opinion that the motion prevail, will say

aye; those of the contrary opinion say no. The ayes have it. The motion prevails.

Mr. Caldwell, of Minnehaha: Mr. President, this was done in order that it might be referred to the appropriate committees—

Mr. Neill, of Grant: Mr. President, I ask the unanimous consent of the House to present the following resolution and press its action at the present time, to avoid the necessity of sending it to the Committee: Resolved that Rule 33 be amended by adding thereto the words "and no such motions and resolutions shall be printed in the Journal". If the House would like, I will explain the reason for the motion,—and I move that the resolution be adopted.

The President of the Convention: Unless otherwise ordered this will go to the Committee on Rules.

Mr. Jolley, of Clay: Mr. President, I would like to read Rule 33: "All motions and resolutions not pertaining to the current business of the Convention, shall be, upon being read, referred by the President to the appropriate committee without debate."

Mr. Neill, of Grant: Mr. President, I move you, Sir, that the House give consent to the present consideration of this motion.

A Voice: Mr. President, I second the motion.

The President of the Convention: It is moved that the rules be suspended in order that the House may consider the resolution. Those of the opinion that the motion prevail will say aye; those of the contrary opinion will say no. The noes have it. The motion is lost and the resolution is referred to the Committee on Rules.

Mr. McGillicuddy, of Pennington: Mr. President, I have a resolution which I will send to the Clerk's desk for reading.

(The Chief Clerk read the resolution, which was to the effect in substance, that a committee of five be appointed whose duty it should be to communicate with President Harrison, requesting him to suspend action on all questions being considered by the Interior Department relating to the establishment of mineral claims on school lands in Dakota until North and South Dakota were admitted to statehood.)

The President of the Convention: The resolution is referred to the Committee on School Lands.

Mr. Clough, of Codington: Mr. President, I hold in my hand a letter, and hanging upon the Stenographers' desk is a seal from

Mr. John Banvard, of Watertown. I move you, Sir, that it be referred to the Committee on Seal.

The President of the Convention: If there is no objection they will go to the Committee on Seal.

Mr. Price, of Hyde: Mr. President; Delegate Jeffries, of Clark County, was unexpectedly called home after the session of the Convention yesterday, and he desires to be excused by the Convention until next Monday.

The President of the Convention: If there is no objection he will be excused. The Chair hears no objection.

Mr. Anderson, of Hand: Mr. President; the nature of my private business is such that it will be necessary for me to be absent from the Convention about two days, and I ask leave of absence for Wednesday and Thursday.

The President of the Convention: If there is no objection you will be excused.

Mr. Neill, of Grant: Mr. President, I move you that the President of this Convention be empowered to excuse members of this Convention for three days, without reference to a committee.

The President of the Convention: The resolution is referred to the Committee on Rules.

Mr. Neill, of Grant: Mr. President, I offer the following resolution: Resolved, that the Committee on Schedule provide for the election of clerks of the court in the settled counties of the state.

The President of the Convention: Referred to the Committee on Schedule.

Mr. Corson, of Lawrence: Mr. President, I desire to present a resolution to the Convention, and ask its reference to the Committee on Public Accounts and Expenditures.

(The resolution was read by the Chief Clerk and was in substance that the indebtedness of South Dakota assumed from the Territory in becoming a state be not included in the limit of \$500,000; that this limitation be defined in the Constitution so as to state that the indebtedness of the State, created by the State, shall not at any time exceed \$500,000; that the inheritance of South Dakota's share of the Territorial indebtedness is not *per se* a state debt.

The President of the Convention: Referred to the Committee on State, County and Municipal Indebtedness.

Mr. Smith of Charles Mix: Mr. President, I would ask to be excused from this Convention for tomorrow.

The President of the Convention: If there is no objection it is so ordered.

The President of the Convention: What is the further pleasure of the Convention?

Mr. Lee, of Spink: Mr. President, if there is no objection I should be glad to occupy about a minute asking a personal favor.

The President of the Convention: Proceed, if there is no objection.

Mr. Lee, of Spink: Mr. President and Gentlemen of this Convention: When I came to Dakota I retired to private life; I am here prepared, however, doing the best I can, practicing for the purpose of manufacturing and making a speech or lecture or whatever you may call it—not to run for any office or to make any money, but to do a little good. I should like to deliver the lecture here in this hall. I have been asked to several times by the church people. I want especially Mr. Caldwell to come. I would like to have you all come, not that I expect to play Henry Clay or Daniel Webster, but because with my hand lifted toward Heaven I want to do good. I hope the members will listen to the announcement, and give Father Lee one more chance. My text will be "The Fatherhood of God, the Brotherhood of Man, and the Good of Prohibition Generally." (Great applause.)

The President of the Convention: The Clerk suggests that if the delegates will leave their names on the blotter or upon a piece of paper upon their desks, he will have them printed and placed on the desks so that everyone will know the seat.

Mr. Neill, of Grant: Mr. President, the committee appointed to go to Bismarck would like to ask of this Convention whether it would be willing to grant them one of the official stenographers, if they deem it necessary that they have one of them. We think perhaps that the labors of this Convention as a whole will not be very cumbersome, as it will be mostly committee work, and one of the official stenographers will perhaps be enough to leave behind, and the other might be a great convenience and an accommodation to us; and if we should deem it necessary to have him, we would like that the President of this Convention be authorized to grant him that leave of absence to accompany us.

Mr. Atkinson, of Brookings: Mr. President, I understood the

arrangement of this Committee was that they had the power to employ such help as they need. It occurs to me that if they need a stenographer that they ought, in this great Territory, to be able to secure one without taking our stenographers away from us. It would not be only a hardship for us to lose them, but it would be an additional expense to take one from here, for there is not only his mileage and expenses on the road, but it would consume several days on the road. They certainly can find some talent in the great Territory of Dakota at that time.

Mr. Neill, of Grant: Mr. President, it was a matter of economy with us, and in order not to hire an additional stenographer, because the pay of this one is going on while he is here; and also the fact that it is impossible to secure a stenographer at Bismarck. Governor Mellette has to come to Watertown to get one, otherwise to St. Paul or Minneapolis.

Mr. Ringsrud, of Union: Mr. President, I move you that the President of this Convention be authorized to designate one of the official stenographers of this Convention to accompany the Commission to Bismarck.

A Delegate: I second the motion.

The President of the Convention: It has been moved that the President of the Convention shall designate one of the official stenographers to accompany the Joint Commission to Bismarck. Is the Convention ready for the question? Those of the opinion that the motion prevail will say aye; those of the contrary opinion say no. The ayes have it and the motion prevails.

Mr. Zitka, of Bon Homme: Mr. President, I move that the Convention do now adjourn.

Mr. Van Buskirk, of Codington: Mr. President, I would like to be excused for two days. Our term of court is in session and I have been telegraphed to come there.

The President of the Convention: It is so ordered unless objection is made.

Mr. Caldwell, of Minnehaha: It is desired by several of the members to meet Mr. Hubbard, the financial head of this institution; and if he is now present I would like that he be presented, in case any of the gentlemen desire to fix up their finances.

The President of the Convention: It has been moved that the Convention do now adjourn. Those of the opinion that the motion prevail will say aye; those of the contrary opinion say no.

The ayes have it and the Convention stands adjourned until tomorrow at two o'clock.

ADJOURNED.

SEVENTH DAY.

Sioux Falls, Dakota, July 10, 1889.

Two o'clock P. M.

Convention called to order by the President.

The Chaplain: Oh Lord, our God, Thou who art the Ruler of the Universe, who are the God of nations, we thank Thee, that Thou hast given us the privilege of taking a part in this the formation of a government that shall be worthy the name of the children of a living God. We do ask Thee, that Thou wilt help each individual member of this Convention, that in our going out and coming in before this people we shall reflect credit upon those who have sent us here, and in the work that Thou hast intrusted to our hands may we do great good for humanity; in the name of Jesus Christ we ask these favors,

AMEN.

The President: The suggestion that I made yesterday afternoon I think will expedite matters somewhat and tend to stop encumbering the record; that where the Journal shows a clerical error only, for the delegates to call at the Clerk's desk afterwards and it will be corrected without taking the time of the Convention and without encumbering the records. If it is a substantial error needing the attention of the Convention, it may be better to call the attention of the Convention to it, but if a clerical error it can be changed by the Clerk at the Clerk's desk at any time.

Mr. Price: I move that the reading of the Journal be dispensed with.

Which motion prevailed by a rising vote of thirty ayes, to nineteen nays.

Mr. Spooner: I desire to present a resolution for the purpose of memorializing Congress upon the development of our artesian system, and request that it be referred to the Committee on Federal Relations and Internal Improvements.

Mr. Sterling: I ask for the reading of the resolution.

Thereupon the Clerk read as follows:

A Memorial to the Congress of the United States requesting the appointment of a Commission for the purpose of making a geological and hydrographic survey of the State:

TO THE CONGRESS OF THE UNITED STATES:

The Constitutional Convention of the State of South Dakota duly assembled, would respectfully represent to your honorable body that it has been demonstrated that within the limits of South Dakota there exists what is known as an artesian basin or system, but that its extent has not been fully determined. And that a desire is being generally expressed by the people of South Dakota that the matter be investigated and the extent of the system fully determined and its availability for the purposes of agriculture and manufactures be determined.

Now, therefore, the said Convention would respectfully memorialize your honorable body and request you to appoint at the earliest possible time a Commission for the purpose of making, and with power to make, a thorough and complete geological and hydrographic survey of the State, including the mineralogical formation of the Black Hills and the artesian basin of South Dakota, and that you make the necessary appropriations therefor.

The President: It will be referred as requested.

Mr. Jolley: I have a report from the Committee on Rules; I will read it.

Sioux Falls, Dakota, July 10, 1889.

MR. PRESIDENT:

Your Committee on Rules have instructed me to report that they recommend that Rule 33 shall be amended to read as follows:

RULE 33. All motions and resolutions not pertaining to the current business of the Convention, shall be, upon being read, referred by the President to the appropriate committee without debate, and such motion or resolution shall not be printed in the Journal until reported from the committee.

And I am further instructed by the Committee on Rules to report that they recommend an additional rule for the government of this Convention, to-wit;

RULE 45. That the President of this Convention is authorized and empowered to grant leave of absence to any member of this Convention for a period not to exceed three days.

JOHN L. JOLLEY,
Chairman.

Mr. Jolley: I move the report of the Committee on Rules be adopted.

Which motion prevailed.

Mr. Caldwell: I would ask if this that has been just done means an amendment to the Rules?

The President: I understand it means an amendment of the rules in this: One rule is amended and a new rule added.

Mr. Jolley: Rule 33 is amended, and Rule 45 is a new rule.

Mr. Caldwell: I believe it is required that for an amendment of the Rules it is necessary that there be a two-thirds majority?

Mr. Jolley: The gentleman from Minnehaha is correct.

Mr. Caldwell: I raise the question that there is nothing but a roll call or registering the vote would show a vote to be a two-thirds majority. Where a special number of any deliberative body is required in order to adopt any measure we must do something which is documentary evidence of the fact that a sufficiency is secured,

Mr. Jolley: If there is no individual objects and no ayes and nays or division called for it is presumed that two-thirds are voting in the affirmative on a measure under consideration.

The President: There is a rule which reads differently in some of the states; in some of the states the constitutional provision is that in certain duties, it shall take two-thirds of all elected to the office to constitute a quorum; this is two-thirds of those present. I apprehend the usual rule is, that all those that are voting are the only ones considered voting, unless it lacks a quorum; and if all vote aye, and none vote no, it does not need a roll call to decide that two-thirds are voting aye. This will be the ruling of the Chair unless the Convention orders otherwise.

Mr. Sterling: I have a resolution I desire to present.

WHEREAS: It is provided by Section 11 of Article VIII of the Constitution that all moneys belonging to the school funds may be under such restrictions as the Legislature may direct, be loaned and

WHEREAS, Section IX of Article VIII of the Constitution provides no lands mentioned in this article shall be leased except for pasture and meadow purposes.

BE IT RESOLVED: That said Section IX of the Constitution be so amended that said school lands may be leased for pasture, meadow and agricultural purposes.

The President: What committee do you ask its reference to?

Mr. Sterling: The Committee on School Lands.

Mr. Price: I desire to present a resolution, and desire to have it referred to the Committee on State Institutions; and here is another I desire to go to the Legislative Committee.

The President: The Secretary will read for the information of the Convention.

The Clerk: A proposition to amend Section III of Article III of the constitution of 1885:

RESOLVED: That Section Three of Article Three of the Constitution of 1885, be amended by striking out "who shall not have attained the age of twenty-five years" where they appear in the first and second clause of said Section Three.

The President: That is referred to the Legislative Committee.

The Clerk: Proposition to amend Section I of Article XIV:

RESOLVED: That the charitable and penal institutions of the State of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind, a school for feeble minded children, a reform school, and such other charitable and penal institutions as may be provided by law.

The President: That is referred to the Committee on State Institutions.

Mr. Clough: I offer the following resolution:

RESOLVED: That in all counties where no Auditors exist, one shall be elected in conformity with the Constitution at the October election.

The President: Referred to the Committee on Schedule.

Mr. Dickenson: Have we not a special order for today—reading of the Constitution?

The President: The Secretary will proceed to read the Constitution under the order of the Convention, yesterday.

The Clerk: Article 1, Name and Boundary,—

Mr. Zitka: If the Convention wishes to signify certain portions, I am willing.

The President: Do I understand that as the Clerk finishes reading one section or article that he waits for the members of the Convention to make any suggestions with reference to referring such propositions to certain committees?

Mr. Zitka: I think that would be better; the Clerk will read, and at the end of each article, wait just a moment.

Mr. Caldwell: I would suggest that the Constitution be read merely by captions of the various articles; it would be sufficient to indicate the proper committee to which the body of the article be referred, as the purpose of this reading is merely for reference by title it seems to me it will be accomplished faster; I make that motion, Mr. President.

Which motion was duly seconded.

Mr. Goddard: Have we any authority to copy anything that we know is unreliable as the copy of the Constitutions are?

The President: I suppose if its accuracy is questioned it will have to be compared with the official copy of the Constitution which will probably reach here tonight. I shall place the other at the disposal of the Chairman of the proper committee.

Mr. Lee: Would not it be wise to postpone this reading until the other comes, and save reading it twice?

Mr. Caldwell: However desirable it might be for general purposes to have a correct copy of the Constitution, it can hardly be regarded as necessary for the purposes for which the motion is made,—which is merely that the various portions of the Constitution may be referred to the proper committee.

The President: The motion before the Convention is that the Constitution be read by separate articles so that the Convention may be informed that certain propositions may be referred to proper committees; the gentleman from Minnehaha moves an amendment, that instead of the articles being read, that the captions of each article be read for the information of the Convention; it is upon the amendment the Convention will now act.

The amendment prevailed.

The President: The Secretary will proceed and read the captions of each article.

The Clerk: Article 1: Name and Boundary.

Mr. Caldwell: The reference will be made by the President of the Convention without a formal motion from the body of the House.

The President: What did I understand?

Mr. Caldwell: That the reference to the proper committee will be made by the President of the Convention; as the caption of the article is read, the President will announce the Committee to which it is referred. At least that is the ordinary practice.

The President: If it is the ordinary practice, it is where I never have been; this is the Constitution that the people have ratified. This does not have to be referred except as the committee itself may act upon it. If it is a resolution that comes in, it may be referred.

Mr. Caldwell: It was the purpose as stated by the gentleman who made the motion and by the gentleman who moved the amend-

ment, that it be read merely for the purpose of dividing up the Constitution among the various committees, in order that it may be regularly and formally in the hands of these bodies that are to consider it and report their action to this Convention. It does not stand here therefore in the nature of a constitution that has been adopted by the people. Merely as an ordinary document for the consideration of this body and its reference would therefore simply be properly taking the course which ordinary matters for the consideration of the body to take.

The President: I would suggest to the gentleman from Minnehaha County, that I differ with him entirely as to the powers of this Convention; if the Convention so orders I shall make the reference.

Mr. Clough: I then move that at the reading of each one of these captions it be assigned to the proper committee.

Mr. Hole: It has been my understanding, and I think it is the common understanding that the fact when this was submitted to the people, it fixed this as the constitution of the State of Dakota, with few exceptions. I see no purpose, no object other than merely for comparison that this Constitution be referred to any committee.

Mr. Davies: I think we are placing a great responsibility upon our worthy President in naming the committees in this way. It seems to me it will be a very difficult task for the President to refer these without any aid without placing the work in conflict with the work done yesterday where this same work has been referred to committees.

Mr. Caldwell: If I may be excused for speaking so many times, I would say, that of course these various committees, (for instance, on Name and Boundary) all these various committees have been appointed but they can act only upon such matters as are definitely and regularly referred to them by this body. While it is true that this Constitution has been adopted by the people, still there are many portions of it other than those enumerated in the Enabling Act which will require some sort of fixing and change, in order that they shall agree with the requirements of the Omnibus Bill. I find there are some provisions in this Constitution, which will not need to be changed or amended, still nevertheless they ought to go to the various committees to be reported back to this House and then be incorporated in a definite official formal document

which shall be prepared by this body to be submitted to the people next October. It does not make any difference whether any particular proposition has any change in it whatever; it nevertheless has to be voted upon, has to be first submitted by this Convention; the fact of the provision having been approved at the election in September, 1885, does not give it any standing as a part of the fundamental law of this commonwealth at this time, and as stated by the gentleman from Bon Homme the purpose of this reference is to refer this document to the various committees in order that it may be properly reported to this body; I would therefore again respectfully refer to the motion which has been made.

The President: The question before the Convention is whether these separate articles shall be referred to the separate committees; the Constitution called the "Sioux Falls Constitution".

The motion prevailed.

Mr. Huntley: As the Secretary proceeds to read the captions, I move that the President assign it to the various committees.

The President: I have no idea that this Convention can amend one of these articles except that it comes within the requirements of the Omnibus Bill; I want it to be understood that this reference is by the Convention.

Mr. Zitka: I made the motion that the different provisions of this Constitution be referred so that those which might be changed may be considered by the proper committees and that those committees may turn to their work or proceed to work. Some of us are anxious to get home, and they do not know as yet what their duties are with reference to the Convention; therefore let the Constitution be referred to the different committees, that each committee may make their report after examination; if there is anything to do; let them do it,—if they cannot do anything, that ends their work. The captions in each and every one of these articles in this Constitution indicates to which committee that portion of the Constitution shall be referred, and I do not think there will be any difficulty whatever on the part of the President.

Mr. Young: I move the Preamble be referred to the Committee on Phraseology.

Mr. Caldwell Not desiring to be captious, I would question that as being the proper reference; it seems me that it should go to the Committee on Bill of Rights. The very name, is the declaration

as to what is the purpose of this Committee on Arrangement and Phraseology; its functions comprise only the work of getting together in proper shape the matter which has finally been adopted by this Convention.

Mr. Young:: There is certainly nothing in this Preamble that interferes with any rights or that grants any of our personal rights; the subject matter is certainly now within the scope of the duties of the Committee on Bill of Rights. The changes to be made in the Preamble is simply to change the name of the state; it seems to me that comes purely within the scope of the duties of the Committee on Arrangement and Phraseology.

Mr. Boucher: It seems to me as I look at it, that as the President is to assign these captions, that this motion is out of order.

Mr. Sterling: I second the motion; it is my idea that there was no committee now to which this might be assigned; there is no committee given us by the Committee on Rules on Preamble; hence I think as the gentleman moved that the Committee on Arrangement and Phraseology is the proper Committee to which this might be referred, for the reasons stated.

Mr. Williams: It seems to me the only change that is necessary to be made is in the name of the State, that the proper committee would be the Committee on Name, Boundary and Seat of Government. Perhaps I am not informed.

Mr. Fellows: I move as an amendment, that it be referred to the Committee on Bill of Rights.

Which motion was lost by a rising vote of forty-one ayes, and fourteen nays.

The original motion prevailed, by a rising vote of thirty-eight ayes and ten nays.

The President: The Preamble stands referred to the Committee on Arrangement and Phraseology.

Clerk: Article 1, Name and Boundary.

The President: Unless otherwise directed, this will be referred to the Committee on Name and Boundary.

Clerk: Article 2, Division of the Powers of Government.

The President: Will the gentleman from Bon Homme indicate what committee he desires that referred to?

Mr. Zitka: I will leave it to you Mr. President, to indicate the Committee.

Mr. Caldwell: In order that the tail may go with the hide, I move that it be referred to the Committee on Arrangement and Phraseology.

Motion was not seconded.

Mr. Spooner: I move that it be referred to the Executive and Administrative Committee.

Which motion prevailed, and the President declared it so referred.

Clerk: Article 3, Legislative Department.

The President: Referred unless otherwise ordered, to the Legislative Committee, No. 3.

Clerk: Article 4, Executive Department.

The President: Unless otherwise ordered, to Committee No. 2, Executive Department.

Clerk: Article 5, Judicial Department.

The President: Committee No. 1, unless otherwise directed,—Judiciary.

Mr. Caldwell: I would call attention to the fact that part of Article 5, refers to apportionment of the Judicial Circuits of the State, and would ask if it might not be proper to refer so much of it to the Committee on Apportionment.

Mr. Caldwell: I withdraw the suggestion.

Clerk: Article 6, Bill of Rights.

The President: What committee will you have that referred to?

Mr. Westcott: I move that it be referred to the Committee on Bill of Rights.

The President: Referred to Committee No. 4, Bill of Rights.

Clerk: Article 7, Election and Right of Suffrage.

The President: Unless otherwise ordered, to Committee No. 5.

Article 8—Referred to Committee No. 8, Education and School Lands.

Article 9, County and Township Organization. Referred to Committee No. 11, County and Township Organization.

Article 10, Municipal Corporations. Referred to No. 9, Municipal Corporations.

Article 11, Revenue and Finance. Referred to No. 13, Revenue and Finance.

Article 12, Public Accounts and Expenditures. Referred to Committee No. 14.

Article 13, Public Indebtedness. Referred to Committee No. 12.

Article 14, State Institutions. Referred to Committee No. 15.

Article 15, Militia. Referred to Committee No. 22.

Article 16, Impeachment and Removal from Office.

Mr. Caldwell: I suggest the Judiciary Committee.

Mr. Zitka: I think the Legislative Committee is the proper Committee. The Legislature is the body that tries impeachments.

Mr. Price: I move that it be referred to the Legislative Committee.

Which motion was duly seconded.

Mr. Caldwell: Impeachment is certainly a judicial proceeding, and not legislative; it seems to me the original suggestion ought to prevail, that it be referred to the Judiciary Committee, not the Legislative; I offer as an amendment, that it be referred to the Judiciary Committee.

Which motion received a second.

Mr. Spooner called to the chair, and President Edgerton took the floor.

Gentlemen of the Convention: I do not concede for a moment that under the provisions of the Omnibus Bill, this Convention has any authority to adopt the course we are now pursuing. The interests at stake are far too momentous to make any mistake in this matter. It is for that reason that I present these views. I may not represent a majority of this Convention. It is my opinion that we cannot change a branch of this Constitution; we have these questions that have been ratified by the people and there is no power in this Convention to alter, or change or add to this article on impeachment. That is the question you are now referring. Taking from the Constitution and referring it to a committee they must act upon it; that is annuling the Constitution.

Mr. Caldwell: While I agree perfectly with the gentleman from Davison, that it is beyond the province of this Convention to order anything not contemplated by the Omnibus Bill, it is nevertheless a fact that this Convention will very much expedite its business if it shall refer these various subjects to proper committees and allow them to inform the Convention by their examin-

ation as to whether or not there be anything contained within any particular Article that may or may not come within the scope of the Enabling Act. The Enabling Act, in addition to providing certain specific changes, such as those referring to the name of the state, and such as referring to the boundary of the state, and such as referring to apportionments, also requires that there shall be such other changes as shall be necessary to make this Constitution comply with the requirements of the Enabling Act. Now whether or not there be anything in the particular Article, needing change, this Convention cannot at this time determine, and it could scarcely determine otherwise than by having it read; a much better way, and the way which was contemplated by the gentleman who offered the motion which prevailed here, was that these various portions of the Constitution should be referred to these several committees, not that changes which are necessary be reported by such committees but that such committee should determine whether or not there is anything in the respective provision that does need changing. This is a matter which it seems to me is freely within the scope of the powers of this Convention and of its Committees. Take for instance the Preamble; now there is nothing in the Enabling act which refers to any change in the Preamble; nevertheless a change in the Preamble is necessary, because it reads, "We the people of Dakota". There is to be a change in the name of this commonwealth, and that name must be stated,—at least suggested or best brought before this Convention for action, by having it come in the way of a report from a committee. As I say with regard to this particular Article 16, whether or not there be anything in that that necessitates a change in order that it shall comply with the provisions of the Enabling Act, how is the Convention to know; each member may know by reading whether or not that be the case, but this Convention as a body cannot know it until it be communicated to it and that particular part be before it; it therefore seems to me to be perfectly practical, and absolutely necessary that every article,—that every part and parcel of this Constitution and the Schedule and Ordinance, should be referred in order that the action or non-action may come before this Convention regularly and properly.

Mr. Jolley: I do not see for the life of me, why there is to be any value attached to this document, the Constitution of the

Convention of 1885, outside of the fact that they did their work and signed it. The people last May said they would support by a large majority the Sioux Falls Constitution and that a constitutional convention should meet here to make such changes as should be made under the Enabling Act. That constitution so passed by a constitutional convention in 1885 was an instrument signed by men composing that Constitutional Convention, who then submitted it to the people; that instrument, as an instrument, has nothing at all to do with this Convention; we do not know what it is; it can't come before us, it is something that has to be referred to our Committees here in order to know what it is. How can it more properly be done, than in this manner? For instance the question, Impeachment and Removal from Office, is submitted to a committee; there possibly may not be any changes in it; there certainly is not that I have seen from reading it through since this discussion began. But, Sir, when that committee comes in, and says that that is the Article that we report as your committee on Impeachment and Removal from Office, and it is adopted and ratified by this Convention, then it is the act of this Convention. There is no other way that we can tell whether changes can be made; and there is no member on the floor of this Convention that will watch any closer not to violate the provisions of the Omnibus Bill, than I will. I have lived too long in this country as a territory to risk again, the chance of voting. I will go as far as the gentleman from Davison; as far as he can possibly do to avoid overstepping our powers under the Omnibus Bill, but I cannot possible see how this Convention can take action without these propositions are referred to committees, and they may make their report to this body for their final action. That constitution that was passed in 1885, is in the hands of the President of this Convention to remain there until he places it in the hands of the Secretary of the State of South Dakota. He is the custodian of it now. It is not before this Convention in any way; but it can be brought before these committees and they can by comparison decide whether it is the same constitution adopted at that time,—and then report to this Convention, and this Convention then votes on those articles. We cannot adopt a Constitution not in the hands of this Convention; we cannot say what it is; we cannot sign an article if it remains in our President's hands; it cannot be enrolled in his hands. It cannot

be brought before this body in any other way than by reference; it cannot be considered by committee without reference.

Mr. Edgerton from Davison: I may have been in fault; I stated my opinion fairly upon this floor as a lawyer; I have no doubt upon the proposition; not the least in the world, but if it will satisfy the gentleman, I will withdraw all opposition; but for myself I do not think Col. Jolley and myself will differ upon that, that it is impossible for this Convention to alter a single phrase of that Constitution except upon the grounds made in the Omnibus Bill; it cannot be done; but if it will satisfy these two gentlemen that they vote upon it again, I am satisfied. I thought the reference might possibly imply the right to change, so I interposed this objection, but if it will satisfy anyone that it shall be re'ferred, I have no objection. This may be said in its favor; I didn't know yesterday, when I made the long list of committees, that many of them would not have much to do, and if this will exalt the character of these committees that I appointed yesterday and give them more prominence before this Convention, and in the State, I would be the last one to throw a straw in their way. I do not know how many of my friends are upon these committees, but in order that those committees may be exalted, I withdraw all objection and let all these articles go before these committees as if they had never been ratified by a former convention, elected by the people of 1885, as if it never had been ratified by Congress, and yet not ratified by the people on the 4th of May last; I withdraw all objection and let it come before the committees.

Mr. Jolley: So far as I am concerned myself; I hope I am not so foolhardy as to set myself up upon so bold a proposition as stated by the gentleman from Davison,—if he supposes that is my position. I supposed, Sir, that the gentleman from Davison, and myself were both delegates in this Convention, each entitled to an opinion, and if we differ, we can differ as gentlemen, and that is the way we do; I state it is, as far as I am concerned. I will state again to the gentleman from Davison, that I will go as far as he will not to change any article in the Constitution that the Omnibus Bill does not allow us to change; I will oppose dotting an "i" or crossing a "t" that the Omnibus Bill does not unqualifiedly allow; yet I do contend that the only way we can get at it is by referring it to committees and have the committees report.

Mr. Hole: I have no special objection that this go to the committees; that may be the best way to facilitate the work of this Convention, but I think it should be distinctly and unequivocally understood that that part of this constitution that has been ratified by the people, and wherein we have no manner of right to change that that stands as the people have adopted it; we do not need to adopt that over again.

Mr. Caldwell: In my judgement it makes no particular difference that the people of this commonwealth have adopted this Constitution, except that we have it here now; the fact that it is the Constitution of 1885, would make no particular difference; it would be as incumbent upon this body to take up every line of it, and re-adopt it now, as it was for it to have been adopted first, because, when this document, the Constitution of 1889, shall go out from this body, not only must go out that part which may be ratified by this body, but there must go with it and with the seal of this Convention upon it, also, that part which may have been brought over from the Constitution of 1885, which was re-adopted on the 14th of last May; and those who maintain here the idea of the reference to committees, do not have any idea whatever of changing a single jot or title of that which ought not to be changed. But it is claimed by them, that in order that this body may have the action of the Convention of 1885 properly before it, that the Constitution of 1885, should be taken and allotted to these respective committees that have been appointed that they make the examination. It would be perfectly proper if this Convention should see fit, to go to work and examine it itself; it is necessary, however, that this Convention shall examine and shall know officially what was the action of the 1885 Convention; what is the document that Congress has said shall be preserved here; it is necessary that this Convention shall do it; it is necessary that this Convention shall do it as a body,—determine what there is in the action of the Constitutional Convention of 1885, that shall remain,—and the very much easier and better way, is to allot the various portions of this document to the committees which have been appointed and allow them to report and thus bring the matter before this body; and if any other idea than this should prevail, what would be the result? There would have to be submitted to the people next October, two documents,—at least two parts of documents;

there would have to be submitted to the people next October for their re-adoption such parts of this Constitution of 1885 as were not changed, and there would have to go also such parts of this Constitution as were necessarily qualified by this Convention; the result would be that there would be twins presented to the people of this commonwealth for their adoption. It seems to me no such thing as that was contemplated by Congress; the object was that this Convention should frame a document out of what had already been ratified by the people with such limitations as were prescribed by this Enabling Act.

Mr. Edgerton, of Davison: I ask the indulgence of this Convention. The gentleman says, that unless all of these articles are re-adopted by this Constitutional Convention they have no place in the fundamental law of the State; that is not my understanding. I ask him this; suppose the majority of this Convention do not agree upon this article now under consideration, Impeachment and Removal from office, can this Convention blot it out after the people have ratified it twice, and after the Congress of the United States have sent it here under the existing circumstances? I deny that this Convention has got the power to blot out that article on impeachment. I had supposed that all objections were withdrawn; I withdrew all that I had; I want it referred to the separate committees so that every committee may have something to do; I announced to the Convention fairly that I withdrew all objection; it was only in answer to that one proposition that I asked the indulgence of the Convention.

Mr. Lee: I ask the Convention if Congress has not made a will, complete, signed, sealed and delivered? The Honorable Judge at my left, is right; we have no occasion or right to prate about the will; I do not believe we have any business to take up this matter and refer it to committees at all; it is already fixed; we cannot change it; we can take the whole business and look it over and come back and make a half a dozen changes that must be made, here in white and black. What is the use of spending our time for nothing?

Mr. Davies: I think this discussion will settle this point as to future points; it is not wasted time; it is something that is liable to come up at any time until the question is settled. I see no way out of this without reconsidering our work of yesterday. With

reference to the gentleman from Davison, and the other gentleman whose countenance I do not remember at once, I do not think there is that conflict which it might appear. It is true that we have light from both these sources; the Omnibus Bill is our authority; the moment we get out of that we find rough sailing. The Omnibus Bill contemplates that this Convention take every line and adopt it as it is when not necessary to modify it according to the directions of the Omnibus Bill,—to modify it when and where we are told to do so by that bill. In my opinion every line of this Constitution must have the stamp of this Convention upon it before we can present it to the people for their vote next October; that it is now understood that every article as presented to the committees,—that these committees understand that they are not to change only as the Omnibus Bill directly tells them so. This work will be simplified, and we can hasten on with it. The question, it seems to me, is one of reference to the committees. I shall favor reference to the Legislative Committee, if that is the motion before the House.

Chairman: Is the Convention ready for the question?

Mr. Zitka: The motion was, that Article 16 be referred to the Legislative Committee: "The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment". What would be more proper than the Legislative Committee for this reference? Impeachments are tried by the Legislature, and every member of the Legislature is judge. Therefore, I insist as far as my vote is concerned, that it be referred to the Legislative Committee.

Mr. Caldwell: I ask that the gentleman will look at Section 3; while of course Section 1 refers to Legislative Impeachment, there is a good deal more under the order of impeachment than impeachment of the members of the Legislature; Section 3 reads:

(Here insert Section 3, Article 16.)

Certainly that is judicial matter.

Mr. Wescott: I move an amendment to the amendment before the House

The Chairman: The previous question is called for; I think the time for an amendment is passed; are you ready gentleman for the question?

Mr. Davies: Please state the question.

Mr. Wescott: Amendments are always in order. My amendment is that this question be referred to the Committee on Bill of Rights. The impeachment is the right of the general public; but at the same time there are rights on both sides. I move the question be referred to the Committee on Bill of Rights.

Mr. Jolley: What is the condition of the motion; how many amendments are there, please?

The Chairman: I believe there are two; there is no second to the last motion.

Mr. Jolley: I move an amendment to the amendment, that this bill be referred to the Committee on Military Affairs; my reason, Sir; for moving this Committee is, that the Chairman of that Committee is a man who during one day of the week preaches the Gospel, and he does all he can to preach religion in its purity; the other six days he is stirring up war and destruction and everything that's bad; the Chairman of the Committee that I ask that this be referred to is the fighting parson from Codington County. (Laughter.)

Mr. Atkinson: I second the amendment to refer it to the Committee on Bill of Rights.

Which proposition to so refer was, upon coming to a vote, lost.

The Chairman: The question recurs upon the amendment to refer it to the Judiciary.

Mr. Dickinson: I rise to the point of order; if the main amendment or the original motion is now before us; the gentleman from Minnehaha County moved an amendment which was lost and the motion now refers to the original question.

The Clerk: Our record shows Mr. Price moved Article 16 be referred to the Legislative Committee and Mr. Caldwell moved to refer it to the Judiciary, which we are acting upon now.

A division of the House being called for the amendment was lost by rising vote.

The question recurring upon the original motion, the motion prevailed and Article 16 was referred to the Legislative Committee.

The Clerk: Article 17, Corporations.

The Chairman: Will the President assume his seat; I do not wish to refer these myself.

The President of the Convention again occupied the chair.

The President: What committee, Mr. Zitka, do you wish this referred to?

Mr. Zitka: Number ten, Corporations Other Than Banking and Municipal.

The President: It is so referred.

Article 18, Banking and Currency, was referred to Committee No. 21, Banking and Currency.

Article 19, Congressional and Legislative Apportionment was referred to Committee No. 16, Congressional and Legislative Apportionment.

Article 20, Seat of Government, was referred to Committee No. 6, Name, Boundaries and Seat of Government.

Article 21, Miscellaneous, was referred to No. 27, Miscellaneous Subjects.

Mr. Willis: I object. This Committee will have to be occupied with Section 5. I foresaw the trouble a moment ago that we would get in a squall like this; some women are not married—

The President: Does the gentleman ask this reference to any special committee or do you ask that a portion of it be referred to one Committee and a portion to another.

Mr. Willis: All I ask for is, that the Committee on Rights of Married Women have their portion of this Article, and if it is necessary, ask that it be substituted.

The President: If I understand the gentleman it is this, that Section 5, of Article 21, be referred to Committee No. 20 on Rights of Married Women.

Mr. Willis: Perhaps this motion should cover the whole ground that the different sections of this Article be referred to the Committees that are named.

Which motion prevailed.

The President: Section 1, of Article 21, is referred to Committee No. 25, Seal of State, Coat of Arms, and Design of Same.

Section No. 2 is referred to Committee No. 28, Compensation of Public Officers and Members.

Section No. 3,—to what committee will you have that referred?

Mr. Caldwell: I would suggest No. 27.

The President: It will be so referred.

Section 4, of Article 21, is referred to Committee No. 19, Exemptions and Personal.

Section 5 is referred to Committee No. 20.

The Clerk: Article 22.

The President: It is referred to Committee No. 7, Federal Relations.

Articles 23, Amendments and Revision of the Constitution, is referred to Committee No. 23, Amendments and Revision of the Constitution.

Article 24, Prohibition.

Judge Corson: I move that further consideration of this matter be postponed until two o'clock tomorrow; I propose to move a reconsideration of this matter in order to have this question discussed this afternoon and re-discussed tomorrow. I think we ought to have a full understanding of this matter before proceeding any further.

Mr. Hole: I second the motion of the gentleman from Lawrence.

Mr. Atkinson: I move we make this the special order tomorrow at ten o'clock and that when we do adjourn it be until ten o'clock.

Mr. Davies: There are committees to meet tomorrow and it will be impossible to do committee work and be here at the same time.

Mr. Dickinson: It seems to me that after the discussion of this subject that we have had now that we should go into a committee of the whole and discuss the proposition.

Mr. Corson: I object to that motion because this motion to postpone until two o'clock tomorrow is made for the express purpose that the members may look into this matter carefully. I desire to look into it myself a little more; I desire to examine it; it may be a very important question; I see by the Omnibus Bill that the Constitution adopted is to be re-submitted. Not the Constitution that we may make here, but the Constitution framed in the Convention of 1885, and adopted, it is to be re-submitted; not some other Constitution,—not something that we may make here; not such amendments as we may desire to make. In order that we can proceed intelligently we had better take one day to consider this matter. That we get into no false position in regard to this subject; hence I desire time to examine it; I think every mem-

ber here desires to examine it carefully and proceed with care in this matter because it is a matter of too much importance to proceed hastily; hence I hope the gentleman will not press the motion to take it up now because the motion is made to postpone it until tomorrow that every gentleman in this Convention may himself examine it, and among ourselves compare notes and get at the true methods on which we are to proceed. I therefore suggest again that it is an extremely important matter how this Constitution is to be handled in this Convention. To know what to do with the Constitution adopted in 1885 to be re-submitted in October. If we are ready to make a new one that is not the Constitution of 1885, it is another and different constitution, and there is doubt if we have any authority or power to make it. I merely throw out the suggestion for the purpose of showing the importance of the question before the Convention.

Mr. Lee: I think after we have all slept one more night we shall be satisfied to go by the Omnibus Bill, without any further debate.

The President: The gentleman from Lawrence moves the further consideration of this reference be postponed until tomorrow at two o'clock and made a special order for that hour. An amendment is proposed, that it be made a special order for tomorrow at ten o'clock, and when this Convention adjourn, it adjourn to meet at that hour. I would suggest Rule Thirty-four, unless it is changed makes the hour of meeting at two o'clock tomorrow; unless it is changed and the rule modified. If the Chair is right the amendment is not in order.

Mr. Atkinson: I withdraw the amendment.

The President: The motion before the Convention is, shall the further consideration of this order of business be postponed until tomorrow at two o'clock and made a special order for that time.

Which said motion prevailed.

Mr. Corson: I now move that the vote by which we adopted the resolution to read the Constitution and refer the different subjects to the proper committee be re-considered, and that motion be made the special order for tomorrow.

Motion duly seconded.

Mr. Dickinson: I believe in a full discussion of any matter

upon which we differ; it seems to me that there is no difference of opinion; I hear no suggestion from any of the speakers that they contend for an amendment of the Constitution. We only differ as to the methods of procedure in doing our work. I am for one very anxious that we get our work done and delay no longer than necessary; I wish we might accomplish more each day, in session and get through quicker; for that reason, I am opposed to this motion. My own understanding is that we have simply to deal with two documents, that we have no power of amendment at all; that we have our requirements in the Omnibus Bill to carry out, and this is a reference to the different committees only in order that if there is any change in accordance to the requirements of the Omnibus Bill, they can so report it. It seems to me a delay until tomorrow is an unnecessary delay; we might just as well settle that here as tomorrow.

Mr. Hole: As I understand the question, there is a radical difference; the one side assumes the necessity of re-adopting the Constitution; of going through and referring it to committees and having the report of the committees which pre-supposes the adoption of it. While upon the other hand the few that I have talked with is of the opinion that the reference is simply for the purpose of comparison; that we cannot adopt it; we have no such right as that; our only right is to review it and compare and see if it compares with the other, and is the Constitution of 1885 which has been voted upon by the people. All we have to do, and all we can do under the Omnibus Bill is merely to compare that and then make the necessary additions and carry out the intention of the Omnibus Bill. There is a direct conflict in this House and that question should be settled. I think if we have time to consider it I am satisfied we will settle it right; I do not want to see it settled this afternoon; I want to give it some study, for it may be very important.

Mr. Zitka: There was no intention on my part when I made this motion to revise the Constitution, nor do anything of the kind; simply to comply with the Omnibus Bill; to refer the Constitution to the different committees so that they may see what changes should be made according to the Omnibus Bill. That there are no portions of the Constitution which had no provision in the

Omnibus Bill; and if there is any parts of the Constitution which has no provision in the Omnibus Bill, to leave it alone without touching it; without doing anything with it; and what parts there are that require any changes—to make them. That was the only object. The only way to get at this was to refer the Constitution to the different committees; because if we took time in Committee of the Whole, or in Convention, it would take from one day to another and I think we would not get through this summer. As far as my experience goes, that is the only proper way to do it, and that we are far from unanimous upon that point and that this motion should prevail.

Mr. Caldwell: I would simply call attention to the Enabling Act, in Section Four: "Whereupon the said Convention" (referring to the four states proposed) "shall be, and are hereby authorized to form constitutions and state governments for said proposed states respectively." And then with regard to South Dakota particularly: "It shall be the duty of the Convention which may assemble at Sioux Falls, as herein provided, to re-submit to the people of South Dakota for ratification or rejection at the election hereinafter provided for in this act, the Constitution framed at Sioux Falls and adopted November 3, 1885, and also the articles and propositions separately submitted at that election, including the question of locating of the temporary seat of government, with such changes only as relate to the name and boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this Act."

There is to be a constitution formed; the powers of this body include that; and it is to be re-submitted; so that such submission as has been had heretofore, cuts no figure whatever. As I said previously, this Constitution of 1885, or one like it, might have been submitted annually for a thousand years and it would not have made any difference; would not have given it a single particle of validity, now or hereafter. The Congress of the United States has required this Convention, that it shall go to work and frame a Constitution; that it shall re-submit such parts of this Constitution of 1885 as may be brought over, or re-adopted by this Convention. Of course if this Convention, in its foolhardiness should see fit to run counter to the requirements of the Enabling Act, or the people

would, and to suppose that it is the purpose of any committee of this body or of this body itself to jeopardize statehood and all blessings which we have hoped from it, by attempting to enact here for submission to the people, something which is outside the province of this body as fixed by the Congress of the United States, is to suppose a foolhardiness, which I do not believe the history of this body will prove to have been just. The reference to a committee is certainly neither by implication nor by necessity nor upon any other consideration, any attempt whatever, or can be construed into an attempt to change anything; but as I said before it is necessary for this body to have regularly before it, what are the provisions of this Constitution of 1885, and the only way to do that is to take what purports to be the Constitution of 1885 and to submit or refer to these various committees these things which purport to be the provisions of the Constitution of 1885, and when these respective committees examine and compare them they will be able to notify and inform this Convention as to whether or not these various parts are contained within the document and by no other way can this information be secured unless this body itself shall go to work and make the comparison.

Mr. Davies: The two motions which have passed this Convention answer the purpose for which it was passed; to give us further time until tomorrow to consider all this, and it is well; but why now go to work and undo all we have done; why undo it until we do know, for we have until tomorrow to consider this very matter; if we find our work today is not right it will not then be too late to change and ask for a reconsideration of this whole matter. We as a convention are to re-consider and examine this Constitution with a view to meet the requirements of the Enabling Act; how? We have appointed the committees, and given this committee a certain portion, and that a certain portion to look over and report, and then we have the Convention as a Committee of the whole, if you please, who can consider every line that comes from every committee. The mere fact that a committee makes a report does not make the Constitution—does not take from this Convention one iota of power or authority. I see no reason therefore, why we should not sustain this second motion, and undo all we have done. Let us go on with whatever business is before us,

and if necessary tomorrow if this is to be the understanding, then re-consideration will be in time.

Mr. Corson: My motion was simply a motion to reconsider and postpone that until tomorrow, so that if we find we are proceeding regularly, it can be withdrawn and voted down; it delays nothing; there is no reason why the motion to reconsider should not stand until tomorrow; I think we had better make it today and let them go over together.

Mr. Willis: Give us time to consider whether or not we want this motion to reconsider, before us or not; let it remain as it is.

The President: The motion to reconsider the resolution by which the Constitution was ordered to be read section by section and referred to proper committees, that the consideration of that motion to reconsider may be postponed until tomorrow at two o'clock, until the time of the special order, if there is no objection that will be the order of the Convention; the Chair hears no objection; it is postponed until tomorrow at two o'clock.

Mr. Humphrey: I have a resolution I wish to offer, and a motion. I move that a committee of three be appointed to carefully proof read and compare the copy of the Constitution as found in Long's Legislative Hand Book, with the original copy now in the hands of the President of this Convention and report any and all errors or discrepancies existing between them.

Which motion was duly seconded.

Mr. Humphrey: My object in moving this covers a portion of the ground, which as I understood it, lead to the adoption of the motion yesterday, that we should read to this Convention the original copy of the Constitution; I had understood it was the purpose of some to have a proof read copy furnished every member of this Convention, of the Constitution a corrected copy,— so that whether it was referred by sections, or whether it was not referred, whenever a committee reported every member of this Convention would have in his possession a verified copy of the original document with which he could compare every report and every alteration proposed, and settle in his own mind and judgment whether it comes within the provisions of the Omnibus Bill. That we have no right to make any alterations whatever except as required by that bill, I believe is the judgment of every member of this Convention. It is for the purpose of placing in the hands of every member

of this Convention, the errata showing any changes or alterations that may exist; then if they are few they can be made with the pen, but if many, it may be proper for the Convention to provide a re-print of the Constitution proof read and verified, and place in the hands of the Convention.

The motion as made by the gentleman from Faulk prevailed.

The President: The committee provided for in the last motion will consist of Humphrey of Faulk, Mr. Dickinson and Mr. Zitka,

Mr. Caldwell: In order at least to have the matter suggested to the members of this Convention, I would make this inquiry, whether or not in this proof reading,—suppose that a manifest error should be observed in the official engrossed copy,—we will say an error in grammar, an error in punctuation, or an error in orthography, and say further that the aforesaid errors should have been corrected in this Long's Legislative Hand Book, is this Committee understood to be required to report that the correction be changed back to the error in the enrolled copy? And in that connection, while I am not speaking to any motion, I would at the same time, like to call the attention of the Convention to some matters pertinent to the suggestion which I have made; it is that unless this engrossed copy be a much better document clerically than documents of such character usually are, it is unavoidable that there shall have been many errors crept into it. There is one section, in which the change of a single letter in a single word did in my judgment precipitate a greater amount of argument with regard to the provisions of this Constitution during the campaign of last May than was precipitated by any other consideration; that is with regard to bribery, and its punishment. There is the word in the printed form in almost all the copies of the Constitution,—“for” should have been “of”; the language is as I recall it, “The offense for bribery or corruption”,—whether or not the error exists in the official copy I do not know, but it would seem to me and I would state it as my private judgment that it is within the purview of this Convention to make all such changes as that, which may be discovered in that enrolled copy, and I would therefore move that this Committee just appointed, shall be requested to report to this Convention precisely what discrepancy there may be between the copy of the Constitution as contained in Long's Legislative

Hand Book and the copy which is to be regarded as the official enrolled copy, in order that when the action of this Convention shall have been enrolled and engrossed, that no error which may have existed in the original enrolled copy may find its way into our work. It seems to me that changes of that character, while this Convention is not permitted to make amendments of a general character, still it seems to me that it is within the powers of this Convention to change those manifest errors which may exist in the enrolled copy, even in those articles which cannot be amended by this body. I believe that to be the case for the reason, that this Convention is required to prepare a constitution and is authorized to make such changes therein as are necessary in order that the result of this work shall comply with the requirements of the Enabling Act. The requirements of the Enabling Act most certainly are, that there shall be formed a document as free from these clerical errors as possible. Of course all the legal evidence there is of the Constitution of 1885, is the engrossed copy, and all this Committee are requested to do is to notify this body of the discrepancy between the enrolled copy and this copy here, and the matter will be brought officially to the attention of this body, and I will move that the Committee be requested to report every discrepancy of any sort, even in the matter of orthography,—even in the spelling of names of counties to be reported to this Convention.

Mr. Humphrey: I will request the gentleman to read the motion I made; it covers that ground.

Mr. Willis: I suggest that the gentleman from Minnehaha get credit for his speech all the same.

On motion of Mr. Fellows, the Convention stood adjourned until tomorrow, July 11, 1889, at two o'clock, P. M.

EIGHTH DAY.

Sioux Falls, Dakota, July 11, 1889.

Two o'clock, P. M.

The Chaplain: Our Father who art in Heaven, Hallowed be Thy name; wilt Thou help us as we come before Thee, the Creator and Preserver of us all, and ask that Thou wilt be with us this day; that we may be wise and discreet and that every act of ours may advance those things that may be best for our interests and for the interests of those that have sent us here. May we at last receive from Thee, that welcome, "Well done thou good and faithful servants, enter thou into the joy of thy Lord." In Jesus' name we ask it.

AMEN.

The President: There were two special orders made yesterday, but unless otherwise directed by the Convention, I will complete the regular calls before announcing the special order.

Mr. Jolley: We do not seem to have any copies of the Journal of yesterday on our desks.

Mr. Price: I move the reading of the Journal be dispensed with.

Which motion prevailed.

Communications and presentations of petitions.

Unfinished business of the previous day.

Reports from Standing Committees.

Consideration of reports from Standing Committees.

Mr. Humphrey: Your Committee on Education and School Lands beg leave to submit a partial report; in explanation of it I would say that it is in the nature of a memorial to the President of the United States with relation to the preservation of the school lands; especially those that were particularly brought to our attention by the resolution introduced by Mr. McGillicuddy; it is as follows:

TO THE PRESIDENT OF THE UNITED STATES:

Your memorialists, the members of the Constitutional Convention, for the State of South Dakota, now in convention assembled at Sioux Falls, in said state respectfully represented:

That several of the most valuable sections of lands reserved for the use of the State for school purposes, which lie in agricultural districts, and some of which are contiguous to considerable towns and cities are sought to be improperly appropriated under pretense or claim that they are mineral or coal lands, and therefore subject to appropriation and entry under the mineral and coal land laws of the United States. Successful efforts in this behalf will cause great loss to the school fund of the State.

Proceedings by the claimants to such lands are necessarily *EX PARTE*, and at present no authority exists in the State, or any of its agents to oppose these claims.

Your memorialists are advised that applications for patents have been, or are about being made to the land department of the United States for such lands based upon their alleged mineral character. We know of no proceeding by any authorized agent of the people of South Dakota by which the applications for patent can be as yet successfully resisted.

The people have no standing in the Department for such purpose. As soon as the State shall be admitted and its agents qualified, South Dakota will be in condition to resist their claims successfully, or to protect the rights of the state whatever they may be relating thereto.

Therefore, your memorialists respectfully but earnestly pray the President of the United States to direct that all proceedings relating to the entry of or issuance of patent to alleged mineral or coal lands situated within the agricultural districts of South Dakota be postponed and stayed until the State is by proclamation of the President declared admitted into the Union of States and until the Legislature of said State shall have the opportunity to appoint the requisite agents therefor and provide by law for contesting the right to make such entries and obtain from the government patents to such lands.

H. A. HUMPHREY,

Acting Chairman of Committee on School Lands.

Mr. Humphrey: I would like to call the attention of the Convention to the partial report made by the Committee on School Lands; I am under the impression that it may be a matter that we desire to hear read.

Clerk: Reads Memorial to the President of the United States as offered by Committee on School Lands.

Mr. Price: It seems to me proper that before this Convention takes action upon so important a matter, that it ought to be discussed, and we ought to thoroughly understand it. The object of that resolution is as I understand it, to protect sections of land for school purposes which are being taken under the mineral and other laws. It is suggested to my mind, Mr. President, that it would place this Convention in a very ridiculous position before the government of the United States, if that resolution was allowed to go to its President; why? Simply because there are established laws relating to public lands, and they stand upon the statute books of the country, and the President of the United States, nor no other power, in my judgment, Sir, has a right to abrogate those laws. William Andrew Jackson Sparks, if you please, a distinguished friend of Dakota's interests(?) tried that once, and it was held by the courts and everything else, that he had no right to suspend the laws of this country. I am constrained to repeat that it would place us in a very ridiculous position before our government.

Mr. Humphrey: It was my purpose to make an explanation concerning this matter; it is this; there is no purpose as indicated in the memorial that we propose either to petition for, or urge the setting aside of the Land Laws of the United States. It is a matter of common knowledge, and especially so throughout Dakota that there is no system of laws within the United States,—laws that have been in the books for years and yet in the application of which we are so much at sea as we are with regard to the land laws; the whole system of rulings and decisions is a matter of such complexity that it is impossible to determine anything definite about them. The facts of the case are, pertaining to this, that it is understood that there are parties endeavoring to secure patents of these lands and are doing it without sufficiently establishing their just title and right to the same; the object of this resolution is to stop the issuing of patents prior to the parties having fully established their rights and at the same time aid in the protection of our school lands and preserve them from being frittered away and being fraudulently deprived of them. It is without the intention of setting aside, or urging the President to set aside any law. It is understood that parties who are anxious to accomplish the patents to these lands are pressing the matter, and are personally pressing it at Washington; I have no idea that they will hurry the officers there any, but

still, it is not impossible; and such things have been done. To prevent the possibility of their hastening action by providing that they be taken out of their order and acted upon before they all can be heard from,—that is the purpose and object of the memorial, and that is all.

Mr. Wood: There are some things in that Memorial, which I think it would be beyond question, going too far, for us to adopt. In the first place, the President has not really anything to do with the matter. These laws are for him to execute. It would be like a criminal judge suspending sentence after a verdict of guilty had been returned. There is a provision in the Federal Statutes for the protection of all parties in interest in this matter; the County Superintendents, if my recollection serves me right, are obligated by their official duties to see that no undue advantage is taken or any trespass committed upon the school lands, that is, lands that will be school lands, if we ever become a state. The laws are in force as the gentleman from Hyde has stated; under these laws the parties are undoubtedly proceeding, and we are asking the President of the United States to suspend such action as is being taken at present looking towards securing patent of this land. I think that that would be working very great hardship to those who are laboring in good faith to get title to coal lands and mineral lands. I do not believe you should memorialize the President to do anything of this character. If there are known cases in which frauds are being perpetrated, let these committees name those cases,—name those individuals who are liable to make an attempt to defraud the government, but do not strike at everybody; because one man is endeavoring to pick up a quarter section of land as coal land, it is no reason for our memorializing the President to suspend patents and thus work great damage to our fellow citizens who are not endeavoring to defraud the government. I have a desire to protect the school lands, but we might make a greater mistake than Brother Sparks made in his day. It was acts of this character that worked all the hardship that was wrought upon the people of this State; the attempt to protect some counties against threatened fraud and bringing everybody else within the operation of the rule. This memorial covers too much; I hope the Convention will not pass it. As I said before, there must be in the mind of some member or members of this Convention specific cases. Now, if there

are such, name those cases; if I had any such cases in mind, I would name them; if I had any evidence of the fact that an attempt was about to be made to fraudulently obtain any of the school lands in South Dakota I would describe the land if I knew the numbers, and if I did not, I would endeavor to ascertain the numbers, and would name the parties or corporations that were endeavoring to defraud the government; then I do not strike at the guilty and innocent alike; then I do not impede progress which we should not in any manner attempt to impede. Where is the case that suggested the inserting of this memorial, let that case be named; let the parties in connection with it be named; it might strike at some of the delegates for all I know; I am sure however, not among the Democrats of the Convention. (Laughter.)

Mr. Sherwood: It seems to me that this resolution is a proper one; the matter of the school lands is of too much importance at this time to be trifled with; it is I think, a question of as great importance as will come before this Convention. It seems to me the gentlemen upon the other side have misapprehended the idea of the resolution. I do not think this is a matter of overriding the laws; I think it is a matter of overloading the courts; that parties interested in this action upon the one side may have a chance to be heard. Today we have no reputation at all anywhere; we stand in the position of law, of being represented by nobody; we cannot appear in these courts and plead for these school sections which are our heritage. This is a matter between the United States and individuals; the individuals take the property and appropriate it to their own use; nobody appears on the part of the United States; whereas, when we become a state, this land will vest in the State, and the State will then have the right to appear before the court and protect its interests. Today it has no title to this land at all; it cannot appear in the courts or proceedings against the United States, or against a party; therefore, I say in order to give both sides a chance to be heard, and give the State, or the people of the State, who are interested in these lands, and whose heritage these lands shall be, a right to be heard, this memorial should be forwarded to the President. It will work no great hardship to now suspend all proceedings of this character until the people of the State of South Dakota shall be represented in their capacity

as a state, I think that is fair, just and legal. I support the proposition.

Mr. Dickinson: I raise the question of order as whether memorializing the President or officers of the government as School Lands, or Artesian Basin Survey, or anything of that sort is within the scope of the work of this Constitutional Convention? It seems to me we are here to modify a constitution as per the Omnibus Bill and not for these questions or resolutions.

The President: I apprehend a memorial sent in in the nature of a petition, may with perfect propriety be sent to the President of the United States or any other department of government, whether it be the act of a town meeting, or body of clergymen, or anybody else.

Mr. Huntley: It is true that certain sections of our school lands are being sought out by parties, with a view of securing a portion of them, under the mineral laws, whether there is any legal ground or not; they are seeking to divert them from their proper channel. We will say this section here, that Sioux Falls would be near, another at Huron, and some others are mentioned that there are now parties at work endeavoring to secure portions of these sections as mineral lands because of their great value. This is a matter that concerns this Convention and the rest of the State; that if such attempts are in progress that we ought to bring about such delay as will give the State an opportunity for defense. That is about what this Memorial can do; I hope it will pass and pass unanimously.

Mr. Davies: If there is a serious grievance it ought to be met, but if we do it, let us do it properly; if we are not sure the President of the United States is the proper person to memorialize, let us seek the Department of the Interior; even the Department of Agriculture would be nearer than the President. We might send to any department, and in due course of time it would get to the right place although not properly directed. But, Sir, if it takes its usual course, we will be dead long before it ever reaches its destination. It will reach the President who will refer it to the Committee, who will pigeon-hole it; or send it on its rounds through the departments.

Again, it is too general; it is the same objection that we have to the general orders that they are something either good, bad or indifferent. There are doubtless men, today that have developed

mineral claims, and are today engaged in doing so, and those who are, in good faith, ought not to be hindered in order to find out who are not acting in good faith. I presume this affects the section of the Black Hills more than any other; I would be pleased to know something in reference to the amount of this grievance. In this section of the Territory I do not apprehend it is very serious. When we become a state, although we have our representatives in Washington, we cannot go there and in two minutes turn everything upside down, and get things just as we would like them; those who have been states long before we ever became a Territory have grievances today that existed years and years. I dare say, if we were to start today and land in Washington tomorrow morning and find Congress in session that then we could not have our grievances settled by next October, when we hope to be a state. Let us consider whether it is practical; let us consider whether it is feasible; let us consider whether it is possible before we go to the President with such a memorial.

Mr. Wood: The Rapid City settlement was in advance of the public surveys, and one section was entered under what was known as the Townsite Law, they filed upon onehalf of section thirty-six, Township two, north of Range seven, east of the Black Hills Meridian; this is now within the corporate limits of Rapid City. Last year, or a year ago, coal was discovered in that vicinity, and filings were made by two individuals on this land; two quarter sections. There has been expended cash, at a cost of about six thousand dollars as I understand it, arranging their diamond drill and running the same for the purpose of going down to discover coal. When I came away, they had reached a depth of something over six hundred feet and no coal had been discovered; it was reported that they had as yet discovered nothing. Whether this is an attempt at defrauding the State out of its right and title to this land is more than I can tell. Sure it is the efforts put forward by these parties were fair, and didn't disclose to my mind any fraud or idea, or intention to take any undue advantage nor to procure title to property that they would not be entitled to receive under the law. If there is any facts connected with the entries that will suggest to anyone that they are to get the title unfairly, it has yet to come to my knowledge.

I have heard of another case, I think, in Turner County; it

is this side of the river; but I think no application for title has been made. It seems that Section 36, Township ninety-eight, Range fifty-one, and Section sixteen, Township ninety-eight, Range fifty, similar efforts are being made. I am not acquainted with the facts of these cases; I have suggested all that I know concerning the lands. I will state the land that I have been informing the Convention concerning is now very valuable; worth from three to five hundred dollars an acre.

Mr. Huntley: I think that those gentlemen who are thus honestly pressing their claims for these mineral lands should not suffer great hardship or further delay in receiving their patents. I can remember that good Brother Sparks (who has been alluded to) thought there were so many frauds out in Dakota, issued an order that all patents should be delayed five years. I know that my patent was delayed four years; I didn't complain about it; maybe some people suffered hardship under that rule. We do not wish to deprive anybody of their rights; we do not propose it in this Memorial; simply that delay be had until the matter may be inquired into. I waited four years; I waited patiently; I got my patent all right. Perhaps I will say that I did think Mr. Sparks was a little too exacting. I trust that this Memorial, if sent, will not keep anyone waiting four years; I simply ask it to delay this matter until we become a state. And certainly that is not an unjust, nor is it an extraordinary request; and if there are those in the Black Hills who have claims they are honestly presenting, and who, under the laws, are entitled to patents to portions of those coal lands, they will get their rights in due time. I believe this Convention will be doing its duty by the people who sent us here, to do all that lies in our power to prevent any of these frauds, that have been attempted, or are being attempted.

Mr. Hole: Mr. President; there are some features of this Memorial that certainly are correct. There are some features that I want to support but I do not want to support it as submitted. It strikes me that if this should be submitted at all, it should be submitted to the head of the department to which it belongs. That is the only way to have any document of this kind acted upon in time to be of any service. Again it seems to me that this Memorial might be changed so that it can in no case work hardship. For instance the Department of the Interior is provided with attorneys

to protect just such cases. Let the Memorial ask that the attorneys provided by the government protect our rights; be called upon in these cases. Let the cases be specified and if necessary let the school lands of Dakota be included so that whenever patents are asked for upon lands that may possibly become school lands in Dakota that that matter first be referred to the proper department to protect our interests. Then we do not stultify ourselves with the administration. We simply, by allowing this to go on, work justice to all and hardship to none and we protect the school lands at the same time. I think that should be the object of this Memorial. In view of this, and wishing to support it in the main, I would move, gentlemen, that this be referred back to the Committee for re-consideration and amendment so as to meet that desired end.

Mr. Cooper: I think the Memorial is entirely unnecessary for this reason: I do not believe for a moment that the school lands can be fraudulently appropriated by any man in this Territory; certain steps have got to be taken by any person or class of persons who desire to secure title to school lands under the mineral laws. That is a matter of record; it is a matter that comes before the public, they have to advertise during a certain time that they will offer proof; they have to give their testimony under oath; and if that land is in the vicinity of Huron or Sioux Falls or Mitchell, I do not believe that the real estate men of this country are going to sit around and see them gobble up that land unless it is mineral land, and if it is any distance from these towns the prices which these men will have to pay for this land is far more than will be required to buy the land within three or four miles of the best cities in this State; so I do not believe that it is necessary in the first place for the reason I do not believe it is possible under the existing order of things to secure any of this land fraudulently. I believe that when the first attempt of that kind was made that a hundred protests would be filed and then it is the duty of the special agents that are sent out here, to protect the interests of the people and protect the interests of the government. One gentleman a few moments ago said, "We will see to it that unless these lands are mineral lands that they shall not be appropriated"; while the gentleman from Turner County (Mr. Huntley) says that he made no complaint when he waited long weary years for his patent. I must congratulate him that he is the only gentleman that I have

met that did not make complaint. I see in this action a reflection upon the people of South Dakota; it ought to be voted down.

Mr. Young: As a member of the Committee on Education and School Lands I wish to make a word of explanation. In the first place there is a difference under the United States statutes between mineral lands and coal lands. The process for getting a patent to coal lands is much shorter and less tedious than getting a patent to mineral lands. The memorial calls attention only to certain valuable sections of land in the mineral districts of the Territory. The memorial calls attention only to certain valuable sections of land in certain agricultural districts of the Territory, contiguous to towns and cities of considerable size. I would suggest that it does not refer to any proceedings or applications for patents on the part of miners in the Black Hills district at all. Let me say with regard to the address of this memorial, that it seems to me such a friend of Dakota as we have in the President of the United States is pre-eminently the man to whom to send a petition from such a body as the Constitutional Convention of South Dakota.

Mr. Davies: I want to explain myself in my position on this resolution. I want to vote for it; and the only object I had in view was debate, and if it was presented in proper manner to Congress or the proper department, I am not opposing this measure.

Mr. Humphrey: Just one word with regard to the amendment that is moved; we have three departments; we have the Executive, the Judiciary and the Legislative. The President of the United States is at the head of that one department; this comes within that department. We present to him our memorial; he will refer it to the proper bureau or department in his executive department. This is the direct way of placing it before the man who must act upon it. So much for its reference. Then in regard to one other point. I wish to state this, that there is a misapprehension of the intention of the Committee that they are making an attack upon any location; but it is a well known fact that there has ever been a disposition to take advantage and any advantage that they can of the school lands. The action contemplated by this memorial, does not hinder any man's rights under the law, if any man has taken any steps within the law to secure title to these lands this will not prevent him. This is simply a stay of proceedings until the rights of Dakota can be secured.

Mr. Caldwell: As a matter of information I would like to ask whether or not in the event of a miner entering land which subsequently proves to be not mineral,—does the mineral entry still hold good the claim of title?

A Voice: No, Sir.

Mr. Caldwell: If it be the case, if it does not, it seems to me that the interests of the State are not jeopardized as much as might first appear. Of course, if the claimants to land shall be able to prove by testimony, that the land actually is mineral, they are certainly entitled to the operation of the mineral land laws of the country. And would be entitled to the possession of the land, but if they do not prove to be mineral lands, according to the answer which I have received, the title to the land reverts to the state,—or will revert to the government and from the government to the State, so that it does not seem to me cause for uneasiness if efforts are to be attended, or if unsuccessful experiments are to be prosecuted. It does not jeopardize or limit, the title of the State or whatever right it may have to the land.

Mr. Humphrey: I would like to ask the question, how can the gentleman understand that it is the intent of this memorial to deprive a party of the possession of the land? It is only intended to limit the acquisition of the title; if he gets the patent of it after a while, is he greatly inconvenienced? We do not propose to deprive a man of his rights to the land, simply to stay his procuring final title.

Mr. Lee: I rise to ask a favor. In order that we may understand what we are doing and the character and importance of this resolution, I desire to hear the memorial read again.

(Clerk reads.)

The President: The question before the Convention is to re-commit this report to the Committee on School Lands.

Mr. Wood: I call for the ayes and the nays.

The motion was lost by a vote of 28 ayes; nays 32.

Mr. Humphrey: I move the previous,—the adoption of the memorial.

Mr. Sherwood: I ask that the roll be called on the main question.

Mr. Wood: I desire to call the ayes and noes on the main question for the purpose of putting myself upon record as voting

no to a petition asking the President of the United States to do what he under the law has no authority to perform.

The vote upon the previous question resulted as follows:

AYES: Atkinson, Berdahl, Boucher, Buechler, Caldwell, Clough Cook, Cooper, Corson, Culver, Davies, Dickenson, Downing, Eddy, Edgerton of Yankton, Fellows, Gifford, Harris, Hartley, Heninger, Hole, Houlton, Huntley, Humphrey, Jolley, Lee, Matson, McCusick, McGillycuddy, Murphy, O'Brien, Peck, Ramsey, Ringsrud, Scollard, Sherwood, Smith, Spooner, Stoddard, Sterling, Stroupe, Thompson, Van Tassel, Wescott, Wheeler, Whitlock, Williams, Williamson, Wood of Spink, Zitka and Mr. President. (56).

NOES: Couchman, Diefendorf, Fowles Goddard, Kellam, McFarland, Price and Wood of Pennington. (8).

The vote upon the adoption of the memorial resulted as follows:

AYES: Atkinson, Berdahl, Buechler, Clough, Cook, Corson, Culver, Davies, Dickinson, Downing, Eddy, Edgerton of Yankton, Gifford, Houlton, Huntley, Humphrey, Lee, Matson, McGillycuddy, O'Brien, Peck, Ringsrud, Sherwood, Smith, Spooner, Stoddard, Sterling, Stroupe, Thompson, Wescott, Wheeler, Willis, Williams, Williamson, Wood of Spink, and Mr. President. (36).

NOES: Boucher, Caldwell, Cooper, Couchman, Diefendorf, Fellows, Fowles, Goddard, Harris, Hartley, Heninger, Hole, Jolley, Kellam, McCusick, McFarland, Murphy, Price Ramsey, Scollard, Van Tassel, Whitlock, Wood of Pennington, Zitka. (24).

So the memorial was declared passed.

The President: The special orders appointed by the Convention, yesterday, will now be considered unless otherwise ordered by the Convention; there are two special orders for this hour.

Mr. Corson: With the consent of the second, I will withdraw my motion to reconsider.

The President: There being no objection it will be withdrawn; the Chair hears no objection, the motion is withdrawn.

Mr. Williams: If it is now in order, I have a motion which I would like to present to the Convention and have it read by the clerk, and upon such reading I will move the adoption of the motion.

Mr. Joiley: We are under a special order of business; unless the Convention shall order otherwise, it cannot be heard, if that refers to that special order of business it may be, otherwise it cannot be received,—except by unanimous consent.

Mr. Williams: I withdraw it at this time.

The President: The Clerk will read,—I have forgotten what we reached yesterday.

A Voice: Article 22.

Mr. Humphrey: I would ask consent of the Convention for an opportunity for the introduction of a motion that will dispose of this matter without the re-consideration of the proposition yesterday; I would like to read it and would like to ask unanimous consent for its introduction.

A Voice: I object.

The President: The Clerk will proceed.

Article 24, Prohibition.

The President: What committee will you have?

Mr. Atkinson: I move that it be referred to the Committee on Rights of Married Women.

The President: It will be so referred unless objection is made, —it is so referred,

Article 25, Minority Representation.

The President: It will be referred unless objection is made, to the Committee on Amendments and Revision of the Constitution.

Schedule and Ordinance,—referred to the Committee on Schedule and Ordinance.

Mr. Caldwell: I would object to this reference of the article on Minority Representation.

The President: It is too late; it is referred.

Form of Ballot,—

The President: Mr. Zitka, what will you have that referred to?

Voice: To the Committee on Election,—Schedule.

The President: It will be referred to the Committee on Schedule unless otherwise ordered by the Convention.

Mr. Clough: I move you that the motion by which Article 24 was referred to the Committee on Rights of Married Women be reconsidered. Would not the people of this Territory take that as an insult? I think that when it was so referred it was thoughtlessly done.

Mr. Atkinson: I disclaim any intention of making a joke of this matter; I was in earnest; it belongs to that Committee, who is more interested in these matters than married women?

Mr. Clough: I would add to my motion that it be referred to the Committee on Schedule.

The President: It is moved that the reference of Article 24 to the Committee on Rights of Married Women, be re-considered by the Convention and that it be referred to the Committee on Schedule.

Which motion prevailed.

Mr. Williams: I have a motion here which I would like read by the Clerk and then move its adoption by the Convention.

RESOLVED: That a committee of five be appointed by the President of this Convention, whose duty it shall be to procure from the custodian, the original Sioux Falls Constitution of 1885, and carefully compare the same with the Omnibus Bill and report to this Convention the changes therein authorized by the Omnibus Bill together with recommendations.

Mr. Williams: I move the adoption of that resolution.

Mr. Caldwell: I simply desire to say that the appointment of such a committee, with such powers as that, would practically wipe out every committee that has been appointed; it is the business of each standing committee to compare such parts of the Constitution as has been referred to it, and report to the Convention.

Mr. Williams: There was quite a discussion here yesterday as to what was the proper method of procedure in this Convention, in reference to this Sioux Falls Constitution. It was contended by some that this Convention is authorized and that it is its duty to submit an entire new Constitution if I understood the remark of the gentleman from Minnehaha County I take it this Convention is not yet lawfully in possession of the document before the people on the 14th day of May nor that this Convention may come into possession of this document in order to ascertain any further changes ordered to be made by the Omnibus Bill. Now that these matters may be brought before the Convention, and then referred to the proper committee is the object of the resolution. I find on looking through and reading a copy of the Constitution as presented in this pamphlet there are more than twenty changes authorized and there are other questions, that there is a difference of opinion. That those changes may be pointed out and those doubtful changes may be discussed is the purpose of this Committee, not to usurp any power or duty of the other Committees, the purpose of this

Committee is only to point out and indicate the section and line where changes are authorized; then these sections or portions will be referred to the proper Committees which is already appointed and not take away their power. It does seem to me that there ought to be a committee whose duty it would be to designate in a brief form the changes that are authorized and the powers that are granted or prohibited so that the special committee to which this subject of the Constitution is referred, may look into that matter. I have asked for a committee of five that each subject might be thoroughly discussed and disposed of in that way.

Mr. Price: I move that the motion be indefinitely postponed.

The motion coming to a vote was by rising vote, of forty ayes to eighteen nayes declared indefinitely postponed.

Mr. Williamson: I move that the committees to which the several articles and sections of this Constitution have been referred, report to this Convention what changes, if any, must be made in such articles and sections in order that the same may comply with the provisions of the Omnibus Bill or Enabling Act.

Mr. Davies: I would like to ask the question for information, is not it already supposed that each committee is already authorized to report whether to make these changes or not and would a report be considered complete without reporting to the Committee on Phraseology all the changes required by the Omnibus Bill? That is the understanding is it not?

Mr. Williamson: My understanding is, that in this matter this Convention has no power to make any changes whatever in that Constitution except such as are required by the Enabling Act. The question came up in the discussion yesterday as to what powers was given to these committees by referring the several sections to them. Leaving the committees without any instruction upon that point leaves the implication upon the records of this Convention that these committees have power to make other changes than such as are contemplated in the Enabling Act. The inference might be drawn that this Convention assumed the power to make any other changes. Of course none believe any such thing, but that all the changes that can be made by this Convention, are only such changes as are required by the Enabling Act. I cannot conceive what duties the several committees to which these several sections are referred can have, except simply to refer back to this

Convention what changes are required to be made, report what those changes are, how these articles must be amended to conform to the requirements of the Enabling Act. If they were left without any instruction whatever, it might lead to confusion and uncertainty. I had intended if this original motion had been re-considered to offer this amendment to the original motion. I think now we have instructed the committees in this respect, that not even by implication do we attempt to assume any power and will amend no article or section except as directed by the Omnibus Bill. Simply instruct the committees about what their duties and powers are in that matter.

Mr. Humphrey: I am in favor of the motion; of the principles embodied in the motion, and if the motion to reconsider the reference of the Constitution had not been withdrawn I should have presented a similar motion to this Convention; it was the motion that I asked the consent to present; it embodied the same principles as that read to you with the exception that in its wording it is a little more general, and that we may choose between the two, I will move it as a substitute; permit me to read it.

Moved that the several committees provided for by the Rules of this Convention be directed to proceed to the discharge of their several duties, and report to this Convention only such changes and amendments to the Constitution as in their judgment are directed by, or are necessary in order to comply with the provisions of the Enabling Act, known as the Omnibus Bill, under the authority of which we are here convened, and by the provisions of which we must be guided and controlled.

Mr. Davies: Another question, I would ask, it is my understanding that the report of these committees comes before this Convention and that before that report is disposed of at all, there must be a vote of this Convention, either for or against it? If that is the understanding of the Convention, quite a number of members will be satisfied on this point. Quite a number seem to doubt, or to be at sea whether these reports are final, as I understand it the Convention as a body, will act upon each report before it is authentic. Am I right in this?

Mr. Williamson: I am perfectly willing to accept the substitute of the gentleman from Faulk County.

Mr. Caldwell: I think that there is no gentleman upon the

floor who will dispute the proposition that there can nothing go into this Constitution, as the one formed by this body, which does pass by a majority vote of this body, and that the action of the various committees are merely preliminary, the same as any other committee report has to be adopted before it is the action of the body.

Mr. Wood: It occurs to me that this resolution is simply to instruct the committees how to proceed. I do not know whether the committees that I form a part of, understand their business or not, but the chances are we will come somewhere near it and the other committees will perhaps understand their duties about as well as they will be informed by this resolution or any other of its kind. We ought not to pass a resolution of this character.

The interpretation of the resolution is simply exponent of the law and our convictions and what we propose to do here.

Mr. Price: Mr. Wood (of Pennington) expresses my views exactly upon this question. This Convention has been duly organized for business; we have a distinguished gentleman to preside over its deliberations; we have confidence in the honesty, integrity and competency (if you please) of the members who constitute this body, and I think as the President of this Convention stated yesterday he has made no mistake in the selection of his committees. These matters have been referred to these committees for consideration, and as has well been stated by the gentleman from Minnehaha County no part of this Constitution can become a part of the Organic law of this new State unless it is adopted by a majority vote of this Convention, and I say, Sir, without any disrespect to the gentleman who has introduced this resolution that it is an insult to the integrity, and competency and honesty of the gentlemen who compose this Convention, especially the committees to whom it has been referred. This resolution ought not to prevail.

Mr. Lee: I move that the resolution be laid upon the table. Which motion prevailed.

Mr. Boucher: I have a resolution I wish the Clerk would read. Clerk reads as follows:

That the people of the State of South Dakota hereby ordain and declare:

FIRST: That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this state shall ever be mo-

lested in person or property on account of his or her mode of religious worship.

SECOND: That the people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and the said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States, that the lands belonging to citizens of the United States residing within this State shall never be taxed at a higher rate than the lands belonging to residents of this State; that no taxes shall be imposed by this State on lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein shall preclude this State from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation but that all such lands shall be exempt from taxation by this State so long and to such extent as such act of Congress may prescribe.

THIRD: That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of the State and free from sectarian control.

Mr. Corson: I move that that be referred to the Committee on Schedule and Ordinance.

Mr. Sherwood: I move that it be referred to the Committee on Federal Relations; I propose it as an amendment to the gentleman's motion.

Which motion prevailed and the resolution was referred to the Committee of Federal Relation. By the President.

Mr. Clough: I have a little matter in the nature of a communication or resolution from a Sioux Falls Preacher's Meeting,—which upon being read will explain itself.

Clerk reads:

TO THE SOUTH DAKOTA CONSTITUTIONAL CONVENTION:
GENTLEMEN:—

This certifies that the following resolution: "Resolved that we call upon the Constitutional Convention to be held at Sioux Falls, July 4th, 1889, to be put about the election to be held in

October, such safeguards as shall insure an honest vote and to prevent colonization of voters, and we also ask that the election of state officers be, if possible, put on a different day from the vote on the Capital and Constitution". was unanimously passed at the Sioux Falls District Meeting of the Dakota Conference, held at Parker, May 21st to 23rd, 1889. This District includes twenty-three pastoral charges in the southern part of your rising commonwealth.

L. HARTSOUGH, President.

The President: The communication will be referred to the Committee on Schedule.

Mr. Sherwood: I would like to have the original motion, as amended, just preceding this last communication.

The President: The amendment made was in the nature of a substitution,—in effect a substitution clearly, but if the gentleman prefers the original motion put as amended, I will put it; I considered it as a substitute, and so ordered the reference.

Mr. Sterling: I move we do now adjourn.

Which motion prevailed.

NINTH DAY.

Sioux Falls, S. Dak., July 12, 1889.

Two o'clock P. M.

The Convention re-assembled pursuant to adjournment.

President Edgerton in the Chair.

Prayer by the Chaplain:

We thank Thee, oh God, our Heavenly Father, in that Thou hast been with us and hast kept us. We ask Thee, that in this session Thou wilt give us Thy spirit that our acts may be pure and our purposes of Thine own prompting, and that the result of this session may be that which shall bring happiness to future generations and joy and glad tidings. We ask it in Jesus' name.

AMEN.

Reading of the Journal.

At this point the President completed the regular call of business and asked—what is the further pleasure of the Convention.

Mr. Sherwood: I do not know whether this is the proper place to present a motion for the re-consideration of the matter that transpired in yesterdays proceedings or not. A matter came up that, upon examination, was different from what I supposed it read; it was in relation to the memorial passed yesterday. I desire to say I am in favor of the memorial. I observe in the last clause thereof something I had not before seen, desire to read and then if it is proper to reconsider it and offer an amendment by inserting three words. In the last paragraph of the memorial, beginning "Therefore your memorialists respectfully" in the fifth line thereof I desire to move the re-consideration of the memorial to insert into it after the word "stayed" the words "upon school sections". I think the memorial covers the ground those who voted for it intended it should cover, and more too, in this, that it is within the scope of it to suspend action, upon all lands; I think the intention was the suspension of action upon the issuance of patents upon

school sections. With a view of moving that amendment, I move you, Sir, that we re-consider the vote by which we adopted the memorial yesterday.

(Motion seconded.)

Mr. Humphrey: I would say in my judgment, that that is an error in the copying of the memorial in the Committee Room. Or else at the printing office; it is my judgment it was the intention of the Committee that those words be there; I understood it to be read that way when it was read. In reading it today upon our tables I find it to be the other way; I am strongly in favor of putting those words in.

Mr. Corson: It seems to me that that appears in the memorial, taking the first part of it; it specifically states "that several of the most valuable sections of lands reserved for the use of the State for school purposes.

Mr. Davies: It is incumbent upon the President to order that change to be made as it was stated that that was the intention of the Committee; it appears to be a clerical error; I would judge it would be competent to have the minutes corrected the same in that respect as in other respects; it was the intention and others so understood it; it was a clerical error and I judge it would be competent for the Chairman to order the Clerk to make that correction without any objection.

Mr. Hole: That was one point of our discussion yesterday, that is the point I made and the reason that I opposed it; I think that if it is corrected that it ought to be by vote because I thought they did not understand it yesterday.

Mr. Wood: I was going to offer an amendment to the motion that this motion be to reconsider for all purposes; it is confined to one particular section; I move to amend, that if it be reconsidered that it be for all purposes. I think that is the rule, by the way.

Mr. Sherwood: My object in voting in favor of the motion might be not to reconsider the whole but only for this one section; I do not know whether it is competent for those who voted against a question to vote to reconsider it entirely.

The President: Will the gentleman from Pennington call my attention to the rule? I take it under our rule anyone can make this motion whether he voted for or against.

Mr. Jolley: The gentleman from Pennington has forgotten

the rule; a person voting in the majority can vote to re-consider on that day or on the next two days; the parliamentary rule is very clear; in Legislative Assembly it would place it upon the third reading.

The President: My own impression was, that when reconsidered, it would then have been upon its final passage and subject to all amendments that would be proper at such a stage of proceeding; I had understood that a different opinion prevailed. I wanted my attention called to the rule otherwise my opinion was that as soon as reconsidered it was before the Convention the same as it was upon its original passage.

Mr. Humphrey: The intention of the committee I believe to be fully manifest; the omission would be a clerical one in the Committee Room. If it is not competent to have it inserted here without the consent of the House, believing the memorial fully states the ground, I move the motion to reconsider it lay upon the table.

Which motion upon a division of the House was adopted by a vote of thirty-five ayes, to twenty-seven nayes.

Mr. McCusick: I ask the Convention to excuse me from further attendance upon the Convention, owing to public duties which I have at home.

The President: The gentleman from Roberts will be excused if the Chair hears no objection. The Chair hears none.

Mr. Williams: asked and was granted leave of absence until Monday.

Mr. Huntley: I would like to call the attention of the Convention, to the expenses of the Convention; the Committee on Expenditures asks that the members hand to some member of the Committee the distance travelled by them in coming to the Convention, and at as early a date as possible that the Committee may discharge its duties and be prepared for its final work.

Mr. Eddy was upon his own request excused until Tuesday morning.

On motion of Mr. Sherwood the Convention stood adjourned until Saturday afternoon, July 13.

TENTH DAY.

Sioux Falls, Dakota, July 13th, 1889.

Two o'clock P. M.

Convention re-assembled pursuant to adjournment.

Convention called to order by Mr. Corson, of Lawrence.

Clerk, upon instructions by the Chairman, read the following communication.

Sioux Falls, Dak., July 12th, 1889.

JUDGE CORSON:—

I shall be absent from Saturday until Monday. Will you please act in the meantime as President of the Constitutional Convention.

A. J. EDGERTON.

The Chaplain: We thank Thee, oh God, our Heavenly Father for all Thy manifest kindness toward us. We ask Thee that Thy holy spirit may this day thoroughly imbue us. Deal graciously with all connected with us; and those of our number who are absent; bring us together with a purpose and full determination to do just the thing for the best interest of those whom we represent. Do Thou guide our steps and lead us on the morrow that we conduct ourselves as becoming representatives; as those worthy to be called children of the living God. We ask it in Jesus' name.

AMEN.

The Journal of the preceding day was read and approved.

The President pro tem proceeded with the regular call of the order of business, without interruption.

Mr. Craig: I am requested to present to this Convention a design of the great seal of South Dakota, executed by a Chicago firm, and ask that it be referred to the Committee on Seal.

The Chairman: It will be so referred.

Mr. Young: It is quite evident that there is not a quorum present, we cannot transact any business; I move we adjourn.

Which motion prevailed.

TWELFTH DAY.

Sioux Falls, Dakota, July 15, 1889.

Two o'clock P. M.

The Chaplain: Our Heavenly Father, we thank Thee for the privilege that we have had of resting on the Sabbath Day and of hearing of Thy word from which we may gain wisdom. Help us now to remember that the fear of the Lord is the beginning of wisdom and if we have the right spirit toward God and men we shall surely prosper and do just those things that will be acceptable in Thy sight and redound to our good and the glory of our Father who liveth forever. Hear us for Christ's sake.

AMEN.

Mr. Dickinson: I move that the roll be called to ascertain if there be a quorum present.

Motion is seconded.

Mr. Humphrey: I move that the motion be laid upon the table.

Which motion prevailed.

Journal of Saturday's session was read and approved.

The order of business for the day was gone through by the President pro tem.

Mr. Humphrey: I offer the following resolution and move its adoption.

Resolved that it is the sense of this Convention that the Standing Committees should report with as much promptness and dispatch as the proper discharge of their duties will permit.

Which motion prevailed.

Mr. Humphrey: The purpose of the resolution is this: The Engrossing and Enrolling Committee have a laborious task before them; several of these committees have but little duty to perform, a large portion there will be no alteration or amendment and so

rapidly as these committees report this Engrossing and Enrolling Committee can proceed with their labors and thus greatly expedite the labors of the Convention.

On motion of Mr. Humphrey, the Convention was adjourned.

THIRTEENTH DAY.

Sioux Falls, Dakota, July 16th, 1889.

Two o'clock P. M.

Convention re-assembled pursuant to adjournment.

President Edgerton in the chair.

The Chaplain: Oh Lord, our God, we bless and adore Thy name this day. In our finiteness and ignorance, we turn to Thine infinite love and wisdom for strength and inspiration. Do Thou guide our deliberations this day, and may everything that is done redound to Thy glory, and the uplifting of mankind. This we ask for Jesus' sake.

AMEN.

The President: On last Friday Mr. McCusick asked leave of absence for the balance of the session; that leaves no member from that district on the Committee on Apportionment and unless there is objection by the Convention, I will appoint Mr. Wescott in his place from that district. The Chair hearing no objection, appoints Mr. Wescott to take the place of Mr. McCusick on the Committee on Congressional and Legislative Apportionment.

Mr. Willis: I offer the following resolution:

Resolved, that the Judiciary Committee be, and are, hereby requested to examine and report to the Convention whether or not in their judgment any portion of the \$20,000 appropriation may be used to defray the expenses of the May or October elections.

Mr. Davies: I ask that the resolution be read again.

The resolution was adopted,

Mr. Wescott: I move you that the roll of standing committees be read in order that progress may be reported.

The President: If there is no objection the clerk will read the list of standing committees.

Which was done.

The Committee on Executive and Administrative reported as follows:

TO THE PRESIDENT OF THE CONSTITUTIONAL CONVENTION OF SOUTH DAKOTA.

We, the undersigned, the duly appointed Executive and Administrative Committee of this Convention, do hereby respectfully report that we have carefully examined Article IV of the Constitution of the proposed state of South Dakota, approved by the voters thereof, May 14th, 1889, and find that no change is necessary or proper in said Article IV, in order to comply with the provisions of the Enabling Act, passed by the Congress of the United States.

C. R. WESCOTT,
R. C. ANDERSON,
J. DOWNING,
W. G. DICKENSON,
W. H. MURPHY.

Sioux Falls, July 1889.

Mr. Sterling: I move you that the report of the Executive and Administrative Committee be made the special order for tomorrow at the completion of the regular call of the business. (Seconded.)

Said motion prevailed.

The Committee on Amendments and Revision of the Constitution made the following report

Sioux Falls, Dakota, July 16, 1889.

MR. PRESIDENT:

Your Committee on Amendments and Revision of the Constitution, to whom was referred Article XXIII of the Constitution, beg leave to report that we have examined said Article and find no change necessary in order to make the same conform to the Enabling Act, and we therefore recommend that the same be submitted as originally drawn.

L. T. BOUCHER,
J. DOWNING,
W. M. COOK,
W. M. STODDARD,
C. J. B. HARRIS.

Mr. Boucher: I move that the report of the Committee on Amendments to the Constitution be adopted. (Seconded.)

Mr. Dickinson: I offer the substitute that it be made the special order for tomorrow afternoon. (Seconded.)

Mr. Sterling: I believe it would be good policy to make all these reports,—although it will not take long to consider them,—to make them a special order for the next day after they are read; we will then have a better opportunity to weigh all the provisions of these various articles and it will prevent any undue haste in adopting the several sections.

The substitute to the motion to adopt the report was adopted by vote of the Convention.

Mr. Van Tassel: I move we do now adjourn.

The motion prevailed and the Convention stood adjourned until tomorrow, July 17, 1889.

FOURTEENTH DAY.

Sioux Falls, Dak., July 17, 1889.

Two o'clock P. M.

Convention re-assembled pursuant to adjournment.

President Edgerton in the chair.

Prayer by Mr. Clough as follows:

Almighty God, our Heavenly Father, we thank Thee for the privilege of greeting Thee this day. Now we ask of Thee wisdom and understanding, for the duties of this hour. Give us discretion in all our affairs. May Thy blessing attend us for Christ's sake.

AMEN.

Journal of the preceding day was read and no corrections suggested.

The President: I have a long communication here with reference to the liquor question, and Prohibition; I refer it to the Committee on Schedule.

Also a ten page communication in reference to the name of the State; I refer it to the Committee on Name and Boundary.

Communication from T. D. Kanouse was read to the Convention as follows:

Sioux Falls, S. D., July 15th, 1889.

TO THE HONORABLE PRESIDENT AND MEMBERS OF THE SOUTH DAKOTA CONSTITUTIONAL CONVENTION, IN SESSION AT SIOUX FALLS:

GENTLEMEN:—

If it would be your pleasure as a body, or as individuals, at any time during your sojourn in the city to visit this institution, you have my most cordial invitation so to do. With highest consideration,

Very respectfully,

THEO. D. KANOUSE, Warden.

The President: Reports of standing committees; the Clerk will read the list as ordered, yesterday.

Mr. Hole: Before we commence reading this list, I would suggest that the Chairman of the various committees report their idea when their reports will come before the Convention. The Schedule Committee must necessarily somewhat depend upon the condition of the other work and would like the information.

Mr. Jolley: Under the order of business Reports of Standing Committees, the Committee on Rules without making a formal report, have drawn up a form and suggested that each Committee use this form in making their report to this Convention. The form of the report is now in the hands of the gentleman from Hutchinson. It is substantially as follows:

Sioux Falls, Dak., July, 1889.

MR. PRESIDENT:

Your Committee on to whom was referred Section, entitled, have considered the same and have compared said section with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill" and have instructed me to report the following section..... of Article..... and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the "Omnibus Bill".

The Committee on Rules thought the reports had better be uniform and that the record had better be made upon the Journal of this Convention at what date they passed.

Under the call of business Reports from Standing Committees, the following reports were made:

The Judiciary Committee submitted the following report:

MR. PRESIDENT:

Your Committee on Judiciary, to whom was referred the resolution requesting said Committee to examine and report to the Convention whether or not, in their judgment, any portion of the \$20,000 appropriation may be used to defray the expense of the May or October elections, beg leave to report: That it is the judgment of this Committee that no part of the said appropriation can be used for the purpose of defraying the expenses of such elections.

THOMAS STERLING,
H. A. HUMPHREYS,
CHAUNCEY L. WOOD,
W. T. WILLIAMS,
C. G. SHERWOOD,
S. G. RAMSEY,
C. J. B. HARRIS,

GEO. C. COOPER,
H. F. FELLOWS,
H. W. EDDY,
S. B. VAN BUSKIRK.

of the Judiciary Committee.

The Committee on Rights of Married Women submitted their report as follows:

MR. President:

Your Committee on Rights of Married Women, to whom was referred Section (5) of Article (21) twenty-one, entitled, "Rights of Married Women", have considered the same and have compared said section with the Sioux Falls Constitution and the act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Section Five (5) of Article (21) Twenty-one of the Constitution, and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill.

Rights of Married Women.

SECTION 5. The real and personal property of any woman in this State, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled shall be her separate property, and shall not be liable for the debts of her husband.

L. V. WILLIS,
Chmn. of Com.
S. A. WHEELER,
T. F. DIEFENDORF,
T. W. THOMPSON,
J. G. DAVIES,
DAVID HALL.

Mr. Spooner: I move that the report of the Committee on the Rights of Married Women be adopted. (Motion seconded.)

Mr. Sherwood: I move as an amendment that the report be made a special order for tomorrow.

Which motion prevailed.

Under the order of business, Presentation of Resolutions and the Propositions Relating to the Constitution:

Mr. Sherwood: I have a resolution here I would like to offer. Which was read by the Clerk as follows:

WHEREAS: It appears that several members of the Constitutional Convention, which convened in the city of Sioux Falls on the 8th day of September, A. D. 1885, did not, through error or accident, sign the Constitution adopted on November 3rd, 1885 and,

WHEREAS: Some of the said members of said Convention

who have been heretofore prevented from signing said Constitution, are now desirous of signing the same.

RESOLVED: That the President of this Convention be authorized to permit any duly and elected and qualified member of said Constitutional Convention of 1885, who has not heretofore signed said Constitution to attach his signature to the same.

The President: Do you ask its reference to the Judiciary Committee?

Mr. Sherwood: Yes, Sir.

The President: It is so referred.

The President: The hour has arrived for the special order; the consideration of the two reports.

Mr. Sherwood of Clark, called to the chair.

Mr. Dickinson: I move that the report of the Committee on Executive and Administrative and the Committee on Amendments and Revision of the Constitution, and made a special order yesterday, be re-committed to the respective Committees in order that they may be made to conform to the uniform form that is recommended by the Committee on Rules.

The Chairman: Do I understand that refers to all the business made the special order for today.

Mr. Dickenson: Yes, Sir; those two reports.

Said motion prevailed.

Mr. Sterling I move you that the Committee now arise and report the action of the Committee.

The Chairman: Do I understand we are now in Committee of the Whole?

Mr. Sterling: If I am mistaken I withdraw the motion.

Mr. Lee: I do not so understand it, that we were in Committee of the Whole.

Mr. Young: If it is in order I would introduce the following resolution:

WHEREAS: The Fiftieth Congress, by the Enabling Act for South Dakota, North Dakota, Montana and Washington, make several new grants of lands, moneys and buildings to South Dakota, upon its admission into the Union, to be used exclusively for specific purposes; and

WHEREAS: It is a mooted question with some members of the Convention as to whether it is obligatory on this Convention and fitting for it to acknowledge and accept said grants by a resolution of the Convention. Therefore, be it

RESOLVED: That the Committee on Judiciary be requested to report on the necessity of such a resolution.

Mr. Jolley: I rise to the point of order, over the gentleman from Lake; we are in Committee of the Whole.

Mr. Wood: We are not in Committee of the Whole.

Mr. Jolley: Did the Chairman rule that? I subside. (Laughter.)

The resolution as presented by the gentleman from Lake, was adopted.

The Chairman: It is referred to the Committee on Judiciary.

Mr. Sterling: I move we adjourn. (Motion duly seconded.)

Mr. Spooner: I rise to the point of order. Are we considered as in Committee of the Whole? (Laughter.)

The Chairman: The Chair will state that perhaps he had better be advised in regard to this matter.

Mr. Spooner: There is a difference of opinion among the members.

The Chairman: I understood that no special motion to go into Committee of the Whole was made; that is what I passed upon; that no special motion was made to go into Committee of the Whole.

Mr. Spooner: Does the Chair pass upon the question whether we are in Committee of the Whole or not?

The Chairman: I think we are.

Mr. Spooner: I move that the Committee rise.

Mr. Edgerton, of Davison: There may be some misapprehension; I understand that there were special orders to be considered in the Convention today; the time had arrived for those special orders, and we commence the consideration of the special orders. I called the gentleman from Clark to the Chair as presiding Officer of the Constitutional Convention.

The Chairman: The motion to adjourn is before the Convention

Which motion prevailed, and the Convention was declared adjourned.

FIFTEENTH DAY.

Sioux Falls, Dakota, July 18th, 1889.

Two o'clock P. M.

Pursuant to adjournment, the Convention was called to order by the President.

Prayer was offered by Mr. Huntley as follows:

O Lord God, our Heavenly Father, we thank Thee for the privilege of once more taking up our duties for this day. We beseech of thee that Thou wilt guide and direct us in all that we undertake and that our labors this day may be pleasing in Thy sight and that we may do faithfully the duties Thou hast committed to us. Guide us by Thy spirit, bless us with Thy favor and when we have done, receive us back to Thyself to enjoy Thine everlasting favor. These blessings we ask for Christ's sake.

AMEN.

The minutes of the preceding day were read and approved.

At this point the call of the standing committees was proceeded with.

Mr. Humphrey: I did not hear the call of the Committee on Education and School Lands. Their reports are completed; they will be read tomorrow.

Under the Order of Business, reports of Standing Committees, the following reports were submitted.

Sioux Falls, South Dakota, July 18th, 1889.

MR. PRESIDENT:—

Your Committee on Compensation of Public Officers to whom was referred Section 2, of Article XXI, have considered the same and have compared said Section 2 of Article XXI, with the Sioux Falls Constitution and the Act of Congress, known as the "Omnibus Bill", and have instructed me to report the following as Section 2, of Article XXI of the Constitution, and that the same is in accordance with the Sioux Falls Constitution and the changes authorized by the Omnibus Bill.

SECTION 2. COMPENSATION OF PUBLIC OFFICERS.—The Gov-

ernor shall receive an annual salary of two thousand five hundred dollars; the Judges of the Supreme Court shall each receive an annual salary of two thousand five hundred dollars; the Judges of the Circuit Court shall each receive an annual salary of two thousand dollars; provided that the Legislature may, after the year one thousand eight hundred and ninety, increase the annual salary of the Governor and each of the Judges of the Supreme Court to three thousand dollars, and the annual salary of each of the Circuit Judges to two thousand five hundred dollars.

The Secretary of State, State Treasurer, and State Auditor, shall each receive an annual salary of one thousand eight hundred dollars; the Commissioner of School and Public Lands shall each receive an annual salary of one thousand eight hundred dollars; the Superintendent of Public Instruction shall receive an annual salary of one thousand eight hundred dollars; the Attorney General shall receive an annual salary of one thousand dollars; the compensation of Lieutenant Governor shall be double the compensation of a State Senator.

They shall receive no fees or perquisites whatever for the performance of any duties connected with their offices. It shall not be competent for the Legislature to increase the salaries of the officers named in this article, except as herein provided.

Respectfully submitted,

H. M. WILLIAMSON,
Chairman

I. R. SPOONER,
J. A. FOWLES,
CHAUNCEY L. WOOD.

Sioux Falls, South Dakota, July 18, 1889.

MR. PRESIDENT:—

Your Committee on Public Accounts and Expenditures, to whom was referred Article XII, entitled, "Public Accounts and Expenditures," have considered the same and have compared said Article XII with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article XII of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill.

ARTICLE XII.

PUBLIC ACCOUNTS AND EXPENDITURES.

SECTION 1. No money shall be paid out of the Treasury except upon appropriation by law and on warrant drawn by the proper officer.

SEC. 2. The general appropriation bill shall embrace nothing but appropriations for ordinary expenses of the executive, legislative and judicial departments of the State, the current expenses of state institutions, interest on public debt, and for common schools

All other appropriations shall be made by separate bills, each embracing but one object, and shall require a two-thirds vote of all members of each branch of the Legislature.

SEC. 3. The Legislature shall never grant any extra compensation to any public officer, employe, agent or contractor after the services shall have been rendered or the contract entered into, nor authorize the payment of any claims or part thereof created against the State, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void; nor shall the compensation of any public officer be increased or diminished during his term of office; provided, however, that the Legislature may make appropriations for expenditures incurred in suppressing insurrections or repelling invasions.

SEC. 4. An itemized statement of all receipts and expenditures of the public moneys shall be published annually in such manner as the Legislature shall provide, and such statement shall be submitted to the Legislature at the beginning of each regular session by the Governor with his message.

A. O. RINGSRUD,
J. V. WILLIS,
M. R. HENINGER,
J. G. DAVIES,
H. M. WILLIAMSON
JOHN SCOLLARD,
W. T. WILLIAMS.

Sioux Falls, Dak., July, 1889.

MR. PRESIDENT:—

Your Committee on Amendments and Revisions of the Constitution, to whom was referred Article 23, entitled, "Amendments and revisions of the Constitution," have considered the same and have compared said article with the Sioux Falls Constitution and the act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article XXIII of the Constitution, and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill".

ARTICLE XXIII.

AMENDMENTS AND REVISIONS OF THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in either house of the Legislature and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered in their Journals, with the yeas and nays taken thereon, and it shall be the duty of the Legislature to submit such proposed amendment or amendments to the vote of the people at the next general election. And if the people shall ap-

prove and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of this Constitution, provided, that the amendment or amendments so proposed shall be published for a period of twelve weeks previous to the date of said election, in such a manner as the Legislature may provide; and provided further, that if more than one amendment be submitted they shall be submitted in such a manner that the people may vote for or against such amendments separately.

SEC. 2. Whenever two-thirds of the members elected to each branch of the Legislature shall think it necessary to call a convention to revise this Constitution they shall recommend to the electors to vote at the next election for members of the Legislature, for or against a Convention; and if a majority of all the electors voting at said election shall have voted for a Convention, the Legislature shall, at their next session, provide by law for calling the same. The Convention shall consist of as many members as the House of Representatives and shall be chosen in the same manner, and shall meet within three months after their election for the purpose aforesaid.

Sioux Falls, South Dakota, July 18, 1889.

MR. PRESIDENT:—

Your Committee on Corporations Other Than Banking or Municipal", to whom was referred Article XVII, entitled "Corporations", have considered the same and have compared said Article with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill" and have instructed me to report the following as Article XVII of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the changes therein authorized by the Omnibus Bill.

ARTICLE XVII.

CORPORATIONS.

SECTION 1. No corporation shall be created or have its charter extended, changed or amended by special laws except those for charitable, educational, penal or reformatory purposes, which are to be and remain under the patronage and control of the State; but the Legislature shall provide by general laws for the organization of all corporations hereafter created.

SEC. 2. All existing charters, or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this Constitution takes effect, shall thereafter have no validity.

SEC. 3. The Legislature shall not remit the forfeiture of the charter of any corporation now existing nor alter or amend the same nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall

hereafter hold its charter subject to the provisions of this Constitution.

SEC. 4. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the Legislature from taking the property or franchises of incorporated companies and subjecting them to public use, the same as the property of individuals and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well being of the State.

SEC. 5. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates as he may prefer.

SEC. 6. No foreign corporation shall do any business in this State without having one or more known places of business and an authorized agent or agents in the same upon whom process may be served.

SEC. 7. No corporation shall engage in any business other than that expressly authorized in its charter, nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

SEC. 8. No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held after sixty days notice given in pursuance of law.

SEC. 9. The Legislature shall have the power to alter, revise or annul any charter of any corporation now existing and revocable at the taking effect of this Constitution, or any that may be created, whenever in their opinion it may be injurious to the cities of this State; in such a manner, however, that no injustice shall be done to the incorporators. No law hereafter enacted shall create, renew or extend the charter of more than one corporation.

SEC. 10. No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town or incorporated village without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied by such street railroad.

SEC. 11. Any association or corporation organized for the purpose or any individual, shall have the right to construct and maintain lines of telegraph in this State, and to connect the same with other lines; and the Legislature shall, by general law of uniform operation provide reasonable regulations to give full effect

to this Section. No telegraph company shall consolidate with, or hold a controlling interest in the stocks or bonds of any other telegraph company owning a competing line, or acquire by purchase or otherwise, any other competing line of telegraph.

SEC. 12. Every railroad corporation organized or doing business in this State under the laws or authority thereof shall have and maintain a public office or place in this State for the transaction of its business, where transfers of its stock shall be made, and in which shall be kept for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amount owned by them respectively; the amount of stock paid in; and by whom; the transfer of said stock; the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the Legislature shall pass laws enforcing by suitable penalties the provisions of this section.

SEC. 13. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the Legislature shall pass no laws exempting such property from execution and sale.

SEC. 14. No railroad corporation shall consolidate its stock, property or franchise, with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice, given at least sixty days to all stockholders, in such manner as may be provided by law. Any attempt to evade the provisions of this section, by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

SEC. 15. Railways heretofore constructed, or that may hereafter be constructed, in this State, are hereby declared public highways, and all railroad and transportation companies are declared to be common carriers and subject to legislative control; and the Legislature shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers and freight as such common carriers from one point to another in this State.

SEC. 16. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other states. Every railroad company shall have the right with its road to intersect, connect or cross any other

railroad, and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

SEC. 17. The Legislature shall pass laws to correct abuses and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.

SEC. 18. Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways or improvements, which compensation shall be paid or secured before such taking, injury or destruction. The Legislature is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporation or individuals, made by viewers or otherwise; and the amount of such damages in all cases of appeal shall on the demand of either party, be determined by a jury, as in other civil cases.

SEC. 19. The term corporations, as used in this article, shall be construed to include all joint stock companies or associations having any of the powers or privileges of corporations not possessed by individuals or partnerships.

Sioux Falls, Dakota, July 17, 1889.

MR. PRESIDENT:—

Your Committee on Bill of Rights, to whom was referred Article VI, entitled "Bill of Rights" have considered the same and have compared said Article VI with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article VI of the Constitution and the changes thereto authorized by the Omnibus Bill, to-wit: In Section Twenty-six where the words "State of Dakota" appear it shall be altered so as to read "State of South Dakota."

COMMITTEE ON BILL OF RIGHTS.

J. R. SPOONER,
.Chairman.

ARTICLE VI.

BILL OF RIGHTS.

SECTION 1. All men are born equally free and independent, and have certain inherent rights, among which are those of enjoying and defending life and liberty, of acquiring and protecting property and the pursuit of happiness. To secure these rights governments are instituted among men, deriving their just powers from the consent of the governed.

SEC. 2. No person shall be deprived of life, liberty or property without due process of law.

SEC. 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied

any civil or political right, privilege or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the State. No person shall be compelled to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the State shall be given or appropriated for the benefit of any sectarian or religious society or institution.

SEC. 4. The right of petition, and of the people peaceably to assemble to consult for the common good and make known their opinions, shall never be abridged.

SEC. 5. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right. In all trials for libel, both civil or criminal, the truth, when published, with good motives or justifiable ends, shall be a sufficient defense. The jury shall have the right to determine the fact and the law under the direction of the court.

SEC. 6. The right of trial by jury shall remain inviolate, and shall extend to all cases at law without regard to the amount in controversy, but the Legislature may provide for a jury of less than twelve in any court not a court of record, and for the decision of civil cases by three-fourths of the jury in any court.

SEC. 7. In all criminal prosecutions the accused shall have the right to defend in person and by counsel; to demand the nature and cause of the accusation against him; to have a copy thereof; to meet the witnesses against him face to face; to have compulsory process served for obtaining witnesses in his behalf, and to a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.

SEC. 8. All persons shall be bailable by sufficient sureties, except for capital offenses when proof is evident or presumption great. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety may require it.

SEC. 9. No person shall be compelled in any criminal case to give evidence against himself or to be twice put in jeopardy for the same offense.

SEC. 10. No person shall be held for a criminal offense unless on the presentment or indictment of a grand jury, or information of a public prosecutor, except in cases of impeachment, in cases cognizable by county courts, by justices of the peace, and in cases arising in the army or navy, or in the militia when in actual service in time of war or public danger; provided, that the grand jury may be modified or abolished by law.

SEC. 11. The right of the people to be secure in their persons,

houses, papers and effects, against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by affidavit, particularly describing the place to be searched and the person or thing to be seized.

SEC. 12. No *EX POST FACTO* law, or law impairing the obligation of contracts or making any irrevocable grant or privilege, franchise, or immunity, shall be passed.

SEC. 13. Private property shall not be taken for public use, or damaged, without just compensation as determined by a jury, which shall be paid as soon as it can be ascertained, and before possession is taken. No benefit which may accrue to the owner as the result of an improvement made by any private corporation shall be considered in fixing the compensation for property taken or damaged. The fee of land taken for railroad tracks or other highways shall remain in such owners, subject to the use for which it is taken.

SEC. 14. No distinction shall ever be made by law between resident aliens and citizens, in reference to the possession, enjoyment or descent of property.

SEC. 15. No person shall be imprisoned for debt arising out of or founded upon a contract.

SEC. 16. The militia shall be in strict subordination to the civil power. No soldier in time of peace shall be quartered in any house without the consent of the owner, nor in time of war, except in the manner prescribed by law.

SEC. 17. No tax or duty shall be imposed without the consent of the people or their representatives in the Legislature, and all taxation shall be equal and uniform.

SEC. 18. No law shall be passed granting to any citizen, class of citizens, or corporation, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations.

SEC. 19. Election shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage. Soldiers, in time of war, may vote at their post of duty in or out of the State, under regulations to be prescribed by the Legislature.

SEC. 20. All courts shall be open, and every man for an injury done him in his property, person or reputation, shall have remedy by due course of law, and right and justice, administered without denial or delay.

SEC. 21. No power of suspending law shall be exercised unless by the Legislature or its authority.

SEC. 22. No person shall be attained of treason or felony by the Legislature.

SEC. 23. Excessive bail shall not be required, excessive fines imposed, nor cruel punishments inflicted.

SEC. 24. The rights of the citizens to bear arms in defense of themselves and the State shall not be denied.

SEC. 25. Treason against the State shall consist only in levying war against it, or in adhering to its enemies, or in giving them aid or comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or confession in open court.

SEC. 26. All political power is inherent in the people and all free government is founded on their authority, and is instituted for their equal protection and benefit, and they have the right in lawful and constituted methods to alter or reform their forms of government in such manner as they may think proper. And the State of Dakota is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land.

SEC. 27. The blessings of a free government can only be maintained by a firm adherence to justice, moderation, temperance, frugality and virtue, and by frequent recurrence to fundamental principles.

MR. PRESIDENT:—

Your Committee on Municipal Corporations to whom was referred Article X, entitled, "Municipal Corporations", have considered the same and have compared said Article X with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill" and have instructed me to report the following as Article X of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill.

DAVID HALL,
H. L. FELLOWS,
J. F. WOOD,
GEO. C. COOPER,
J. ATKINSON,

ARTICLE X.

MUNICIPAL CORPORATIONS.

SECTION 1. The Legislature shall provide by general laws for the organization and classification of municipal corporations. The number of such classes shall not exceed four and the powers of each class shall be defined by the general laws, so that no such corporations shall have any powers, or be subject to any restrictions other than all corporations of the same class. The Legislature shall restrict the power of such corporations to levy taxes and assessments, borrow money and contract debts, so as to prevent the abuse of such power.

SEC. 2. Except as otherwise provided in this Constitution, no tax or assessment shall be levied or collected, or debts contracted by municipal corporations, except in pursuance of law, for public

purposes specified by law; nor shall money be raised by taxation, loan or assessment, for one purpose, ever be diverted to any other.

SEC. 3. No street passenger railway or telegraph or telephone line shall be constructed within the limits of any village, town or city without the consent of its local authorities.

Mr. President: The report of the Committee on Compensation of Public Officers is before the Convention; what will the Convention do with the report?

Mr. Sterling: I move it be made a special order for tomorrow's session.

Which motion prevailed.

The President: The report of the Committee on Amendments and Revision of the Constitution is before the Convention; what will you do with this report?

Mr. Willis: I move that the remainder of the reports of Standing Committees as made today be made a special order for tomorrow.

Which motion prevailed.

The President: What is the further pleasure of the Convention; the Convention has a special order for this hour?

Report of the Committee on Rights of Married Women was read by the Clerk.

Mr. Sterling: I move the adoption of the report.

Which motion was duly seconded.

Mr. Humphrey: I am not fully satisfied with the form of the report; though I would not knowingly cast upon the Committee any reflection as I am one of them. I neglected to confer with the Committee in regard to it. The point I have in mind is simply this; we are not here to draft an article or section of the Constitution, as stated in this report, in compliance with the Constitution and the Omnibus Bill; we are here only for the purpose, under restrictions, to draft such changes and amendments as are required by the provisions of the Omnibus Bill. This report here, purports to be simply a section of the proposed Constitution which they inform us in their report is in compliance with the Constitution and the Omnibus Bill; that the people are without any knowledge that it is the original Constitution; the point is that every report of the Standing Committees should clearly and plainly show what changes if any, are made in the Constitution by their report.

Mr. Jolley: I do not understand that this report, handed

in yesterday by the Committee on Rules, is ironclad; only they want some uniform report; they can report in addition to that any change that is made. The gentleman from Faulk County can, if he wishes, lumber up the record; they have the right to do it; nothing to stop them; no rule, made by a committee of this Convention can stop them; if each Committee report that they have compared this article with the Sioux Falls Constitution and have made such changes as are authorized by the Omnibus Bill, if in addition to that they want to go into detail and show what changes they have made, I do not know any rule to preclude them.

Mr. Humphrey: They do not show that there is any changes, or that it is in accordance with the Constitution. "And have instructed me to report the following as section" so and so, "which is in compliance with the Constitution and Omnibus Bill"! No, Mr. President, I do not desire to lumber or cumber up the records of our Journal, but I do hold that the Journal ought to show to those whenever reading it say a hundred years from now, any amendment made in the Constitution. It seems to me to take this report where it ends and add, "And we report the following changes and amendments" (then truly state what they are) and then let the form read as follows: "Your Committee respectfully recommend the amendments", etc. We are not here to adopt that Constitution we are here for its revision, and if the report follow the words, "We are instructed to report the following changes and amendments" (briefly state them) and then state that the article as amended will read as follows,—then recommend the adoption of the amendment in the submission of the article.

The President: Is the Convention ready for the question? It is moved that the report of the Committee be adopted.

The motion, reaching a vote, was duly carried and the report of the Committee on Rights of Married Women was duly declared adopted.

Mr. Humphrey: I move you that the report of Standing Committees be required to clearly and plainly show what, if any, changes and amendments of the Constitution are proposed.

Mr. Hole: I move that the resolution be referred to the Committee on Rules.

Which motion prevailed.

Mr. Sterling: I move you, Sir, that the report of the Committee

on Rights of Married Women just adopted, be referred to the Committee on Arrangement and Phraseology.

The President: I do not think it is necessary for the Convention to so order; it would go there if it is not ordered.

Mr. Sterling: I may be mistaken; my opinion is the reports should go to the Committee on Arrangement and Phraseology and after that Committee report that there should be a vote taken on the Constitution as a whole and upon that the ayes and nays should be called and we should pass it as upon the final passage of a bill in any body.

Mr. Davies: I move that we adjourn.

Which motion prevailed and the Convention was adjourned until Friday, July 19th, 1889, at two P. M.



SIXTEENTH DAY.

Sioux Falls, Dak., July 19th, 1889.

Two o'clock P. M.

Pursuant to adjournment the Convention re-assembled with President Edgerton in the chair.

Prayer was offered by Mr. Matson as follows:

O God, our Father, we recognize Thee as the Giver of all good. Thou art our sufficiency in times of temptation and in need. In trial we have the assurance that all our needs shall be supplied according to Thy wishes. If we lack wisdom we are encouraged to ask of Thee, who giveth liberally. We acknowledge at this hour our need of wisdom and understanding in our work and most ardently do we pray that we may receive of Thy knowledge so that all we do may be approved of Thee. May it commend itself to the best judgment of the people. We ask that Thou wilt help us to be thoughtful and discreet, carefully weighing all the interests that may come before us for our consideration, both here and in our committees. May we studiously endeavor to be both harmless and wise. We ask that we may personally be careful that we injure no man in his rightful interests, and also personally alert that we do no injury to those interests pertaining to the best welfare of the people. We ask these things in our Redeemer's name.

AMEN.

Mr. Fellows: I move that we dispense with the reading of the Journal.

Which motion prevailed.

Mr. Spooner: Ought we not to make corrections now in the Journal where they have been observed? I notice the names of some of the Committees have been omitted. The Committee on Amendments and Revision of the Constitution; also the Committee on Corporations Other Than Banking and Municipal, the names of the Committee have been omitted; I move that they be inserted.

The President: They will be inserted where they are not in the report. The Clerk will so correct it.

Mr. Spooner: Also in regard to the uniformity in the reports according to the form which was suggested by the Committee on Rules, it would indicate that the Chairman only was to sign which I did in the case of the Committee on the Bill of Rights; I move that the names of the whole Committee be inserted.

The President: I would suggest, Dr. Spooner, that suggestions do not go in the record.

Mr. Spooner: I move that in the case of the report of the Committee on Bill of Rights that the names of the whole Committee be inserted.

Which motion prevailed.

The President: The Clerk would like to have the Chairman of the Committee inform him who would make the correction; the difficulty is, the report is printed and handed in; now the Clerk is ordered to amend the report; that is in and printed; the report was made yesterday, signed by the Chairman and has become a part of the records of this Convention; now the Convention orders it amended.

Mr. Hole: I see no way but to make a motion to re-commit it to the Committee, and let it come in properly signed.

Mr. Dickinson: As I am a member of the Committee I would like to make a statement; I am not so desirous for glory that I want my name to appear with all the Committees of which I am a member. It will save a good deal of printing if only the name of the Chairman appears; I should prefer to let it remain as it is, the Chairman reporting in behalf of the Committee.

Mr. Sterling: I move that we re-consider the vote, by which the Clerk was instructed to amend this report.

Which motion prevailed.

The President: The question now before the Convention is, shall the Clerk amend the report of the Committee by adding the balance of the names of the Committee to the report?

Mr. Humphrey: It would seem to me that the position held by the Chair is that of order. It is incompetent for us to amend this report until the report is before the Convention for consideration and the omission of the names would be regarded as an ordinary error of the Journal, and might be inserted simply as the Journal. It does not seem to me proper to take up that report prior to the time that we have the report itself before the Con-

vention for consideration. I do not think it would be a proper time to consider an amendment to the report and think the motion is out of order.

The President: The motion before the Convention is, shall the Clerk amend the report of the Committee?

Which motion was lost.

Under the order of business, reports from Standing Committees, Mr. Stoddard as Chairman of the Committee on Election and Right of Suffrage, reported as follows:

MR. PRESIDENT:—

The Committee to whom was referred Article VII, entitled, "Election and Right of Suffrage" respectfully report that we have found the same to be in conformity with the Enabling Act and recommend that no alterations be made, and the article as attached hereto I send to the Secretary's desk.

Mr. Murphy: As Chairman of the Committee on Federal Relations, I report that our report is ready and is sent to the desk of the Secretary.

Education and School Lands.

Mr. Humphrey: In the absence of Mr. Coats, the Committee have prepared a report and it is ready with the exception of a couple of signatures of a couple of members who have not yet arrived.

State Institutions and Public Buildings.

Mr. Young: The report is sent to the desk.

Exemptions.

Mr. Buechler: The report is in the hands of the Secretary.

Mr. Davies: The report of the Committee on Banking and Currency, is ready and sent to the desk of the Clerk.

Mr. Clough: The report of the Committee on Military affairs is ready, but three members of the Committee are absent.

Mr. Houlton: Announced that the report of the Committee on Seal and Coat of Arms was ready and sent to the Clerk's desk.

Mr. Eddy: The report of the Committee on Miscellaneous Subjects is ready and sent to the desk.

Mr. Lee: I announce the report of the Committee on Manufactures and Agriculture, as complete with the exception of one name, and as in the hands of the Clerk.

Mr. Sterling: I send to the Clerk's desk the report of the Judiciary Committee on the resolution referred to it.

Under the order of business consideration of reports of Standing Committees.

Mr. Davies: I move that the reports of the Standing Committees of today, be made the special order for tomorrow.

Mr. Dickinson: I move as an amendment that it be made a special order for Tuesday.

Mr. Davies: I accept that.

The motion prevailed and the reports were made the special order for Tuesday afternoon.

The President: The time for the special order has arrived; we will now proceed to the consideration of the reports of yesterday, made a special order for today.

Mr. Van Buskirk, of Codington County, called to the chair.

The Chairman: The first matter upon the special order is the report of the Committee on Compensation of Public Officers, read as follows by the Clerk.

The Chairman: Gentleman, what will you do with the report of this Committee?

Mr. Sterling: I move the adoption of the report as read.

The Chairman: Is there anything to be said upon this motion? If so you will have an opportunity to make any suggestions,—the motion is to adopt the report of the Committee on Compensation of Public Officers.

The matter coming to a vote prevailed, and the report of the Committee was declared adopted.

The Clerk: Reads the report of the Committee on Public Accounts and Expenditures as follows:

The Chairman: The report of the Committee on Public Accounts and Expenditures is before the Convention; what will you do with it?

Mr. Davies: I move that the report be adopted.

Motion seconded.

Mr. Humphrey: I should like to inquire of the Committee what changes or amendments are made in their report from the original Constitution.

Mr. Jolley: The Chairman of the Committee is away; I know there are no changes made.

The Chairman: The motion before the Convention now is, shall we adopt the report of the Committee on Public Accounts?

The motion prevailed, and the Chair announced that said report was adopted.

The Clerk reads the report of the Committee on Amendments and Revision of the Constitution, as follows:

The Chairman: Gentlemen of the Convention, you have before you the report of the Committee on Amendments and Revision of the Constitution.

Mr. Dickinson: I notice in Section 2, near the last of the Section, the Convention was to consist of as many members as the House of Representatives. When the copy of the Constitution in the hand book was compared with the original Constitution it was found that the words "Of the Legislature" was inserted there; I think they are omitted. It should be the House of Representatives of the Legislature.

The Chairman: Do you make the motion?

Mr. Dickinson: I move that it be re-committed to the Committee for amendment in that particular.

Mr. Boucher: I move as an amendment that the amendment be made at this time without re-committing the report.

Mr. Hole: I would like to inquire of the Chairman of the Committee with what copy this is compared by the Committees. If it is compared with the various copies that are floating around, I can see how these mistakes will be made.

Mr. Boucher: I will state I had what I supposed was a correct copy. The correction was made at the time Mr. Humphrey was Chairman of the Committee. I thought he had a correct copy.

Mr. Humphrey: I would like to inquire what is the question before the House as it stands.

The Chairman: I do not remember whether the first motion as made was seconded.

Mr. Sterling: I seconded the amendment that the correction be made now.

Mr. Humphrey: I would suggest that in connection with that errata found in the hand book that that is an error on the part of the Committee without doubt. The correction will be made by the Committee from the errata. I remember well that

the number should be the number of the members of the House of Representatives of the Legislature.

The Chairman: The motion of Mr. Dickinson was that it be referred back to the Committee for correction; the amendment was made that it be now amended in this particular, by inserting these words, "Of the Legislature"; are you ready for the question?

The amendment prevailed.

The Chairman: The motion of Mr. Dickinson as now amended will be put.

The motion prevailed.

The Clerk reads the report of the Committee on Corporations Other Than Banking and Municipal, as follows:

Mr. Dickinson: As this article is quite length yand no changes were made in it, I move that the reading of it be dispensed with.

Mr. Corson: I would ask the Chairman of this Committee if any changes were made.

Mr. Dickinson: I am Chairman of that Committee and there were no changes made in that article.

The Chairman: Unless there are objections made, the reading of the report will be dispensed with.

The motion to adopt said report reaching a vote, prevailed.

The report of the Committee on Bill of Rights was read by the Clerk as follows: (Here insert.)

The Chairman: You have before you the report of the Committee on Bill of Rights; what is the pleasure of the Convention.

Mr. Fellows: I would like to have the report of the Committee as to what changes they have made.

Mr. Spooner: The amendment was indicated in the report as read by the Clerk.

The Chairman: Perhaps the Chairman might add it is the original bill only with the word added that would make it read as desired.

Mr. Boucher: I move that the report of the Committee on Amendments and Revision of the Constitution be adopted.

Which motion was seconded.

The Chairman: This is the report of the Committee on Bill of Rights; I think the report of the Committee on Amendments and Revision of the Constitution has been adopted; I so understand it; this is the Bill of Rights that is under consideration now.

Mr. Chairman: The question before the House now is upon the adoption of the report of the Committee upon the Bill of Rights. As I understand, it is precisely as before with the exception of the amendment so that it will read "South Dakota" instead of "Dakota".

The motion prevailed and the report of the Committee on Bill of Rights was adopted.

Mr. Dickinson: It is my recollection, that Mr. Boucher is correct as to the report of the Committee on Amendments and Revision of the Constitution not having been adopted. It was the report to which I made an amendment; it was amended and I do not recollect that the motion was made to adopt the report as amended. I move you, Sir, that the report as amended be adopted.

Mr. Atkinson: That is my recollection; I second the motion.

Mr. Humphrey: I would like to have the Chairman state to the Convention if there was any amendment or alteration reported.

Chairman of the Committee: No there was not.

The motion to adopt the report of the Committee on Amendments and Revision of the Constitution as amended, prevailed.

The Chairman: The next order of business is consideration of the Committee on Municipal Corporations.

The Clerk reads the report of the Committee as follows: (Here insert it).

Mr. Davies: I would ask if there were any changes in this.

Mr. Whitlock: There was none.

Mr. Davies: I move the adoption of the report.

Which motion prevailed.

Mr. Atkinson: I notice in the names of the Committee as printed is "J. Atkinson"; I move it be changed to read "I. Atkinson."

Which motion prevailed.

Mr. Harris moved that the Convention do now adjourn.

Mr. Sterling: There were some reports from the Judiciary Committee; other than the reports upon the general work assigned to them; I suppose it would be well to read those reports; they are up in the Clerk's desk.

The Clerk read as follows:

MR. PRESIDENT:—

Your Committee on Judiciary, to whom was referred the resolution requesting the Committee to report as to the necessity

of accepting the several new grants of lands, moneys and buildings to South Dakota by a resolution of the Convention, would respectfully report: That without determining the necessity of such resolution, the Committee recommend, that a section be incorporated in the Constitution, formally accepting such grants.

THOMAS STERLING,
H. A. HUMPHREY,
A. J. BERDAHL,
H. W. EDDY,
W. T. WILLIAMS,
S. A. RAMSEY,
D. CORSON,
C. J. B. HARRIS,
S. B. VAN BUSKIRK,
of the Judiciary Committee

The President: What will the Convention do with the report of the Committee?

Mr. Wescott: I move that the report be adopted.

Mr. Davies: I would amend that and make it the special order for next Tuesday.

Mr. Humphrey: I move as a substitute of the motion before the House that the report of the Judiciary Committee be referred to the Committee on Amendments and Revision of the Constitution with instructions to report on Tuesday.

Which motion prevailed.

The Clerk reads the second report of the Committee on Judiciary, as follows:

Sioux Falls, July 19, 1889.

MR. PRESIDENT:—

Your Committee on Judiciary to whom was referred the resolution pertaining to the signing of the Constitution by members of the Constitutional Convention of 1885, who by inadvertance or other cause were prevented from signing the same, respectfully report;

That upon consideration of such resolution it is the sense of the Committee that this Convention has no authority to grant permission to such members to affix their signatures to the Constitution of 1885.

THOMAS STERLING,
H. A. HUMPHREY,
A. J. BERDAHL,
H. W. EDDY,
W. T. WILLIAMS,
S. A. RAMSEY,
D. CORSON,

C. J. B. HARRIS,
S. B. VAN BUSKIRK,
of the Judiciary Committee.

The Chairman: What will you do with the further report of the Judiciary Committee?

Mr. Young: I move that it be adopted.

Which motion prevailed.

Mr. Sterling: Under the call of business, introduction of propositions relating to the Constitution I sent to the Clerk's desk a resolution providing for an amendment to the Section but did not have an opportunity to call it to the attention of the members and the Chair at that time. I move you that we return to that order of business.

Which motion prevailed and the Clerk read the resolution, as follows:

RESOLVED: That the report of the Committee on Education and School Lands be amended so that Section 9 of Article 5 shall read as follows:

SEC. 9. The lands mentioned in this article may, under such regulations as the Legislature may prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company. All rents shall be payable annually in advance, nor shall any lease be valid until it receives the approval of the Governor.

Mr. Sterling: I move now that the resolution be made a part of that special order under which the report of the Committee on Education and School Lands is to be considered next Tuesday.

The Chairman: It will be made the special order for next Tuesday unless objection is made.

Mr. Hole: I think in deference to the Committee that has that special work before them, that this should be referred to them, and as there is no second to the gentleman's motion, I will move you that this be referred to the Committee on Education and School Lands.

Which motion was duly seconded, and by vote of the Convention, adopted,

Mr. Harris: I renew my motion to adjourn.

Mr. Clough: I sent a request to the desk for the old soldiers to sign their names, their rank, company and regiment on a slip of paper and hand the same to me. The object of this is to find

out how many members of the Convention are veterans; that this information may be made a matter of record and be preserved.

The Chairman: The motion before the House is to adjourn and will now be put.

The motion prevailed and the House stands adjourned.

SEVENTEENTH DAY.

Sioux Falls, Dak., July 20, 1889.

Two o'clock P. M.

Convention re-convened pursuant to adjournment.

Mr. Corson, of Lawrence, in the Chair.

Prayer by Mr. Clough, of Watertown.

Our Heavenly Father, as we commence the labors of this day we desire to thank Thee for Thy preserving care; for Thy tender mercies toward us, for Thy Father's love that is revealed to us We now ask Thy blessing on this Convention here and absent; upon the intricate work resting upon the Commission we have sent out to do. Grant Thy blessing upon this day's proceedings; follow us all the days of our lives, and give us an abundant entrance into Thy kingdom, we ask for Christ's sake.

AMEN.

The Clerk read the following communication:

Sioux Falls, Dak., July 20, 1889.

JUDGE CORSON:—

Will you please preside in the Convention during my absence?

A. J. EDGERTON.

Mr. Young: I move we do now adjourn.

Which motion prevailed and the Convention stands adjourned.

NINETEENTH DAY.

Sioux Falls, Dak., July 22nd, 1889.

Two o'clock P. M.

Convention re-assembled pursuant to adjournment.

Mr. Corson, of Lawrence, presiding.

The Chaplain: We thank Thee, O God, for all that Thou hast done for us in the past and we ask Thee that Thou wilt so direct our path and so lead us out in the way that our paths will be paths of peace and our ways, ways of righteousness, that we shall do great good for ourselves and the commonwealth that we represent. Wilt Thou go with us and own our efforts this day, we ask it in the name of Jesus, our Savior.

AMEN.

The Journal of the preceding day was read and approved. Under the order of business, reports of Standing Committees, the Committee on County and Township Organization announced their report was ready.

The Committee on Engrossment and Enrollment sent to the desk of the Secretary an engrossed copy of the memorial that was to be sent to the President of the United States, concerning school lands.

The Chairman: That will be left until tomorrow until President Edgerton returns.

Mr. Spooner: I move that the report of the Committee on County and Township Organization be made a special order for tomorrow.

Which motion prevailed.

Under the order of business announced by the Chair in the usual call of business for the day, Presentation of Resolutions and Propositions Relating to the Constitution.

Mr. Goddard: I have a resolution and ask that it be read and referred to a Committee.

WHEREAS: There has been presented to this Convention some evidence of an uncertainty as to where the Seventh Standard Parallel upon which the line of Dakota is to be divided into two states is, and

WHEREAS: It seems necessary to confer with the Constitutional Convention of North Dakota, now in session at Bismarck, to adjust this matter amicably and permanently,

RESOLVED: That the Convention instruct the Commission sent by this body to Bismarck to come to the best possible agreement with the Committee of the North Dakota Convention concerning said boundary line and report the same to this body.

The Chairman: It will be referred to the Committee on Name, Boundary and Seat of Government, if no objection is made. The Chair hears no objection; it is so referred.

The Chairman: I will call attention of the Convention to the fact that in the report of the Committee on Compensation of Public Officers, there is a slight error in using the word "each"; the report has been adopted and it may be necessary to reconsider the report for the purpose of correcting that error; it was copied from an erroneous copy of the Constitution I suppose; the word "each" has been inserted where it should be omitted.

Mr. Spooner: According to the rules, must not a motion to re-consider be made the next day?

The Chairman: It would be in time today, I think.

Mr. Spooner: I move you, Mr. President, we consider that motion whereby the Convention adopted the report of the Committee on Compensation of Public Officers.

The Chairman: You will notice on the first page of the proceedings of July 18th it occurs on the last line, "The Commissioner of School and Public Lands shall each receive"; of course Commissioner of School and Public Lands is one officer; that word "each" should not appear; it is moved and seconded that the vote by which that report was adopted be re-considered.

Which motion prevailed.

Mr. Clough: I move the report be amended in accordance with the fact by striking out the word "each".

Mr. Hartley: I call upon the gentleman to specify the line.

The Chairman: It is the word "each" occurring in the last line of the first page of the printed Journal of July 18th, in the report of the Committee on Compensation of Public Officers.

The motion was adopted by vote of the Convention.

Mr. Dickinson: I move the report as amended be now adopted. Which motion received a second and duly prevailed.

On motion the Convention adjourned.

TWENTIETH DAY.

Sioux Falls, July 23d, 1889.

Two o'clock P. M.

Convention convened pursuant to adjournment, with Mr. Corson, of Lawrence in the Chair.

Prayer was offered by Mr. Matson, of Kingsbury County.

O Lord, our Heavenly Father, we thank Thee today, for Thy gracious favor shown us thus far in the history of the Convention; for as much of life as we are permitted to enjoy and for the feeling of friendship and good will which prevails among the members. And we thank Thee for the general desire to know the right in all matters, and to do justly in our deliberations. We pray at this time for a continuation of Thy blessing; may we not be perplexed in our work by any little ambitious natures; may we forget self; we pray that we may truly know what is right on all questions, and do the right fearlessly; we pray that the result of our labors may prove a lasting good to all concerned. Hear us at this time for the homes we represent; for the loved ones from whom we are separated at this time, and the several interests we for the present have abandoned. Guide us through this day and through the remaining days of the Convention and through the future of our lives, for Jesus' sake.

AMEN.

Journal of the previous day was read and approved.

The Chairman: The first order of business, is Communications and Presentation of Petitions.

Communication from the American Sabbath Union was presented by Mr. President, pro tem, as follows:

The American Sabbath Union, whose office is No. 23 Park Row, earnestly recommend that a provision should be inserted in your new Constitution, protecting and encouraging Sabbath observance, and perhaps the following form would be acceptable to the Convention: "No work or trade shall be carried on the first day or the week, usually called Sunday, except such as may be strictly charitable or necessary, and the Legislature shall pass laws regulating and encouraging the obesrvance of the Holy

Sabbath by all the people."

If the matter has not already been favorably acted upon by the Convention will you not kindly take the necessary steps to have this or a similar proposition adopted by the Convention and then lay the Constitution for the new State upon the sure foundation of the divine work and reap the gratitude of your own people and those of the whole country.

SIGNED:

ELIOTT F. SHEPHERD,
President of the American Sabbath Union.

U. S. MAYOR,

GEN. O. O. HOWARD,
of the Executive Committee.

J. H. KNOWLES,
WILBER F. CROFTS,

Secretary.

Mr. Clough: As there is no committee to which that can go I move that it be assigned to a special committee of five.

Motion duly seconded.

The motion prevailed.

The Chairman: I will appoint as a Committee of Special Reference on the Communication, Messrs. Clough, of Codington; Huntley, of Jerauld; Willis, of Aurora; Wood, of Pennington; and Ramsey, of Sanborn.

The Chairman: Unfinished business of the previous day; nothing I believe but special orders.

Reports from Standing Committees?

Congressional and Legislative Apportionment? No report ready.

Judiciary? Report sent to the desk.

Schedule? Not ready.

Name, Boundary and Seat of Government?

Mr. Stroupe: The report is signed by all but two of the Committee who are absent, and is sent to the desk.

State, County and Municipal Indebtedness.

Mr. Sherwood: Not ready.

Legislative, McFarland (Chairman.) Report sent to desk.

Education and School Lands? Coats (Chairman.) No report ready.

Revenue and Finance.

Goddard, Chairman: Not ready.

Printing? No response.

Expenses of the Convention?

Mr. Huntley: Not ready.

The President: The Secretary will read these reports and unless it is the desire of the Convention, the Clerk will not read that portion of each report, quoting the Constitution; they are printed, and you can examine them more particularly.

The Clerk reads the report of the Committee on Judiciary, as follows:

MR. PRESIDENT:—

Your Committee on Judiciary to whom was referred Article V of the Constitution, entitled, "Judicial Department", having had the same under consideration together with those provisions of the Omnibus Bill relating to said department, beg leave to report as follows:

FIRST. That upon the question of the power of the Convention to increase the number of Judicial Circuits, the Committee, after free discussion and examination, conclude that under Section 5 of said Omnibus Bill, allowing such changes in the Constitution as relate to the re-apportionment of Judicial Districts, such increase by this Convention is clearly authorized.

SECOND. That the Committee have likewise carefully considered the expediency and the necessity of such increase. In the older and more thickly populated counties a large volume of business has been long pending before the courts; and new counties, largely settled since the apportionment by the Convention of 1885, have added to the litigation to be disposed of in all the Circuits; and, from all the information before the Committee it is apparent that the six Judicial Circuits as provided by the Constitution of 1885 are inadequate in number for the transaction of the business pertaining thereto, and that the creation of county courts with jurisdiction as limited by the Constitution will not afford the required relief.

THIRD. That in recommending an increase from six to eight Judicial Circuits, the Committee believes the interests of justice and economy will be subserved, and that such is the least increase consistent with a proper administration of the law.

FOURTH. That in the re-apportionment made by the Committee care has been taken that the Circuits shall be formed by compact territory and bounded by county lines, and that, having reference to such compactness and the amount of business to be done, your committee believe that the apportionment, as shown by the amendment to Section 16 of Article V herewith submitted, is a just and equitable apportionment of the State into Judicial Circuits. That such apportionment annuls Section 16 of Article Five, so that the same shall read as follows;

SECTION 16. Until otherwise ordered by law said circuits shall be eight in number and constituted as follows, viz.:

FIRST CIRCUIT: The Counties of Union, Clay, Yankton, Turner, Bon Homme, Hutchinson, Charles Mix, Douglas, Todd, Gregory, Tripp and Meyer.

SECOND CIRCUIT: The Counties of Lincoln, Minnehaha, McCook, Moody and Lake.

THIRD CIRCUIT: The Counties of Brookings, Kingsbury, Deuel, Hamlin, Codington, Clark, Grant, Roberts, Day and the Whapeton and Sisseton Reservation, except such portion of said reservation as lies in Marshall County.

FOURTH CIRCUIT: The Counties of Sanborn, Davison, Aurora, Brule, Buffalo, Jerauld, Hanson, Miner, Lyman, Presho, and Pratt.

FIFTH CIRCUIT: The Counties of Beadle, Spink, Brown and Marshall.

SIXTH CIRCUIT: The Counties of Hand, Hyde, Hughes, Stanley, Sully, Potter, Faulk, Edmunds, Walworth, Campbell, McPherson, and all that portion of said State lying east of the Missouri river and not included in any other Judicial Circuit.

SEVENTH CIRCUIT: The Counties of Pennington, Custer, Fall River, Shannon, Washington, Zeibach, Sterling, Nowlin, Jackson, Washabaugh, and Lugenbeel.

EIGHTH CIRCUIT: The Counties of Lawrence, Meade, Scobey-Butte, Belano, Pyalt, Dewey, Boreman, Schnasse, Rinehart, Martin, Chouteau, Ewing, Harding, and all that portion of said State west of the Missouri river and north of the Big Cheyenne River and the north fork of the Cheyenne river not included in any other Judicial Circuit.

FIFTH: The Committee further report amendments as follows: In the first line of Section 38 of said Article V, insert the word "South" before the word "Dakota", and in the third line of said Section 38 insert the word "South" before the word "Dakota". And we herewith report Article V with the changes and amendments aforesaid incorporated therein which changes and amendments are necessary to comply with the provisions of the Omnibus Enabling Act and are authorized by the same, and the Committee respectfully recommend the adoption of said Article as amended.

ARTICLE V.

JUDICIAL DEPARTMENT.

SECTION 1. The Judicial powers of the State, except as in this Constitution otherwise provided, shall be vested in the Supreme Court, Circuit Courts, County Courts, and Justices of the Peace, and such other courts as may be created by law for cities and incorporated towns.

SUPREME COURT.

SEC. 2. The Supreme Court, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which shall be co-extensive with the State, and shall have a general su-

perintending control over all inferior courts, under such regulations and limitations as may be prescribed by law.

SEC. 3. The Supreme Court and the Judges thereof shall have power to issue writs of habeas corpus. The Supreme Court shall also have the power to issue writs of mandamus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same in such cases, and such regulations as may be provided by law, provided, however, that no jury trials shall be allowed in said Supreme Court, but, in proper cases, questions of fact may be sent by said court to a Circuit Court to a trial before a jury.

SEC. 4. At least two terms of the Supreme Court shall be held each year at the seat of government.

SEC. 5. The Supreme Court shall consist of three Judges, to be chosen from districts by qualified electors of the State at large, as hereinafter provided.

SEC. 6. The number of said Judges and Districts may, after five years from the admission of this State under this Constitution, be increased by law to not exceeding five.

SEC. 7. A majority of the Judges of the Supreme Court shall be necessary to form a quorum or to pronounce a decision, but one or more of said Judges may adjourn the Court from day to day or to a day certain.

SEC. 8. The term of the Judges of the Supreme Court, who shall be elected at the first election under this Constitution, shall be four years. At all subsequent elections the term of said Judges shall be six years.

SEC. 9. The Judges of the Supreme Court shall by rule, select from their number a Presiding Judge, who shall act as such for the term prescribed by such rule.

SEC. 10. No person shall be eligible to the office of Judge of the Supreme Court unless he be learned in the law, be at least thirty years of age, a citizen of the United States, nor unless he shall have resided in this State or Territory at least two years next preceding his election and at the time of his election be a resident of the district from which he is elected, but for the purpose of re-election, no Judge shall be deemed to have lost his residence in the District by reason of his removal to the seat of government in the discharge of his official duties.

SEC. 11. Until otherwise provided by law, the districts from which the said Judges of the Supreme Court shall be elected, shall be constituted as follows:

FIRST DISTRICT: All that portion of the State lying west of the Missouri river.

SECOND DISTRICT: All that portion of the State lying east of the Missouri river and south of the Second Standard Parallel.

THIRD DISTRICT: All that portion of the State lying east of the Missouri river and north of the Second Standard Parallel.

SEC. 12. There shall be a Clerk and also a Reporter of the Supreme Court, who shall be appointed by the Judges thereof, and who shall hold office during the pleasure of said Judges, and whose duties and emoluments shall be prescribed by law, and by the rules of the Supreme Court not inconsistent with law. The Legislature shall make a provision for the publication and distribution of the decisions of the Supreme Court, and for the sale of the published volumes thereof. No private person or corporation shall be allowed to secure any copyright to such decisions, but if any copyrights are secured they shall inure wholly to the benefit of the State.

SEC. 13. The Governor shall have authority to require the opinions of the Judges of the Supreme Court upon important questions of law involved in the exercise of his executive powers and upon solemn occasions.

CIRCUIT COURTS.

SEC. 14. The Circuits Courts shall have original jurisdiction of all actions and causes, both at law and in equity, and such appellate jurisdiction as may be conferred by law and consistent with this Constitution; such jurisdiction as to value and amount and grade of offense, may be limited by law. They and the Judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, mandamus, quo warranto, certiorari and other original and remedial writs, with authority to hear and determine the same.

SEC. 15. The State shall be divided into judicial circuits, in each of which there shall be elected by the electors thereof, one Judge of the Circuit Court therein, whose term of office shall be four years.

SEC. 16. Until otherwise ordered by law said Circuits shall be eight in number and constituted as follows, viz:

FIRST CIRCUIT: The Counties of Union, Clay, Yankton, Turner, Bon Homme, Hutchinson, Charles Mix, Douglas, Todd, Gregory, Tripp and Meyer.

SECOND CIRCUIT: The Counties of Lincoln, Minnehaha, McCook, Moody and Lake.

THIRD CIRCUIT: The Counties of Brookings, Kingsbury, Deuel, Hamlin, Codington, Clark, Grant, Roberts, Day and the Whapeton and Sisseton Reservation, except such portion of said reservation as lies in Marshall County.

FOURTH CIRCUIT: The Counties of Sanborn, Davison, Aurora, Brule, Buffalo, Jerauld, Hanson, Miner, Lyman, Presho and Pratt.

FIFTH CIRCUIT: The Counties of Beadle, Spink, Brown, and Marshall.

SIXTH CIRCUIT: The Counties of Hand, Hyde, Hughes, Sully, Stanley, Potter, Faulk, Edmunds, Walworth, Campbell, McPherson, and all that portion of said State lying east of the Missouri river and not included in any other judicial circuit.

SEVENTH CIRCUIT: The Counties of Pennington, Custer, Fall River, Shannon, Washington, Ziebach, Sterling, Nowlin, Jackson, Washabaugh, Lugenbeel.

EIGHTH CIRCUIT: The Counties of Lawrence, Meade, Scobey, Butte, Delano, Pyatt, Dewey, Boreman, Schnasse, Rinehart, Martin, Choteau, Ewing, Harding, and all that portion of said State west of the Missouri river and north of the Big Cheyenne river and the north fork of the Cheyenne river not included in any other judicial circuit.

SEC. 17. The Legislature may, whenever two-thirds of the members of each house shall concur therein, increase the number of judicial circuits and the judges thereof, and divide the State into judicial circuits accordingly, taking care that they be formed of compact territory and be bounded by county lines, but such increase of number or change in the boundaries of districts shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed.

SEC. 18. Writs of error and appeals may be allowed from the decisions of the Circuit Courts to the Supreme Court under such regulations as may be prescribed by law.

COUNTY COURTS.

SEC. 19. There shall be elected in each organized county a county judge who shall be judge of the county court of said county, whose term of office shall be two years until otherwise provided by law.

SEC. 20. County Courts shall be courts of record and shall have original jurisdiction in all matters of probate guardianship and settlement of estates of deceased persons and such other criminal jurisdiction as may be conferred by law, provided that such courts shall not have jurisdiction in any case where the debt, damage, claim or value of the property involved shall exceed one thousand dollars, except in matters of probate guardianship and the estates of deceased persons. Writs of error and appeal may be allowed from county to circuit courts, or to the Supreme Court in such cases and in such manner as may be prescribed by law, provided that no appeal or writ of error shall be allowed to the circuit court from any judgment rendered upon an appeal from a justice of the peace or police magistrate for cities and towns.

SEC. 21. The County Court shall not have jurisdiction in cases of felony, nor shall criminal cases therein be prosecuted by indictment; but they may have such jurisdiction in criminal matters not of the grade of felony, as the Legislature may prescribe, and

the prosecutions therein may be by information or otherwise as the Legislature may provide.

JUSTICES OF THE PEACE.

SEC. 22. Justices of the Peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any case wherein the value of the property or the amount in controversy exceeds the sum of one hundred dollars, or where the boundaries or title of real property shall be called in question.

POLICE MAGISTRATE.

SEC. 23. The Legislature shall have power to provide for creating such police magistrates for cities and towns as may be deemed from time to time necessary, who shall have jurisdiction of all cases arising under the ordinances of such cities and towns respectively and such police magistrates may also be constituted ex-officio justice of the peace for their respective counties.

STATE'S ATTORNEY.

SEC. 24. The Legislature shall have power to provide for State's Attorney's and to prescribe their duties and fix their compensation; but no person shall be eligible to the office of Attorney General or State's Attorney who shall not at the time of his election be at least twenty-five years of age and possess all the other qualifications for Judges of the Circuit Courts as prescribed in this article.

MISCELLANEOUS.

SEC. 25. No person shall be eligible to the office of Judge of the Circuit Court or County Courts unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States; nor unless he shall have resided in this State or Territory at least one year next preceding his election, and at the time of his election be a resident of the county or circuit, as the case may be, for which he is elected.

SEC. 26. The Judges of the Supreme Court, Circuit Courts and County Courts shall be chosen at the first election held under the provisions of this Constitution, and thereafter as provided by law, and the Legislature may provide for the election of such officers on a different day from that on which an election is held for any other purpose, and may, for the purpose of making such provision, extend or abridge the term of office for any of such judges then holding, but not in any case more than six months. The term of office of all judges of Circuit courts, elected in the several judicial districts throughout the State shall expire on the same day.

SEC. 27. The time of holding courts within said judicial circuits and counties shall be as provided by law; but at least one term of the circuit court shall be held annually in each organized county, and the legislature shall make provision for attaching un-organized counties or territory to organized counties for judicial purposes.

SEC. 28. Special terms of said courts may be held under such regulations as may be provided by law.

SEC. 29. The judges of the circuit courts may hold courts in other circuits than their own, under such regulations as may be prescribed by law.

SEC. 30. The judges of the Supreme Court, circuit court and county courts shall each receive such salary as may be provided by law, consistent with this Constitution, and no such judge shall receive any compensation, perquisite or emoluments for or on account of his office in any form whatever, except such salary; provided, that county judges may accept and receive such fees as may be allowed under the land laws of the United States.

SEC. 31. No judge of the Supreme Court or circuit court shall act as attorney or counsellor at law, nor shall any county judge act as attorney or counsellor at law in any case which is or may be brought into his court or which may be appealed therefrom.

SEC. 32. There shall be a Clerk of the Circuit Court in each organized county, who shall also be Clerk of the County Court, and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the court consistent with the provisions of law.

SEC. 33. Until the Legislature shall provide by law for fixing the terms of courts, the Judges of the Supreme, Circuit and County Courts, respectively, shall fix the terms thereof.

SEC. 34. All laws relating to courts shall be general and of uniform operation throughout the State, and the organization, jurisdiction, power, proceedings and practice of all the courts of the same class or grade, so far as regulated by law, and the force and effect of such of the proceedings, judgments and decrees of such courts severally shall be uniform, provided, however, that the Legislature may classify the county courts according to the population of the respective counties and fix the jurisdiction and salary of the judges thereof accordingly.

SEC. 35. No judge of the Supreme or Circuit Courts shall be elected to any other than a judicial office, or be eligible thereto, during the term for which he was elected such judge. All votes for either of them during such term for any elective office, except that of Judge of the Supreme Court, Circuit Court or County Court, given by the Legislature or the people, shall be void.

SEC. 36. All judges or other officers of the Supreme, Circuit or County Courts provided for in this article shall hold their offices until their successors respectively are elected or appointed and qualified.

SEC. 37. All officers provided for in this article shall respectively reside in the district, county, precinct, city or town for which they may be elected or appointed. Vacancies in the elective of-

fices provided for in this article shall be filled by appointment until the next general election, as follows: All judges of the Supreme, Circuit and County Courts, by the Governor. All other judicial and other officers by the County Board of the county where the vacancy occurs; in cases of police magistrates, by the municipality.

SEC. 38. All processes shall run in the name of the "State of South Dakota". All prosecutions shall be carried on in the name of and by authority of the "State of South Dakota."

THOS. STERLING, Chmn.
H. A. HUMPHREY,
CHAUNCEY L. WOOD,
SAMUEL A. RAMSEY,
H. W. EDDY.
CARL SHERWOOD,
S. B. VAN BUSKIRK,
G. F. FELLOWS,
D. CORSON.

Mr. Van Buskirk: I move that that be made a special order for Thursday; the reason that I make it at that time is, because the report will not be printed and in the possession of the members tomorrow morning. (Motion seconded.)

Mr. Cooper: I move an amendment, that it be made the special order for tomorrow. (Amendment seconded.)

Mr. Davies: Have we not more work on hand now than we can do?

Mr. Van Buskirk: I desire to suggest, I believe the rule is that where time is contained in a motion, the longest time is put first.

The Chairman: The gentleman is right; those favoring the postponing the consideration of this report until Thursday will signify it by saying aye. The Chair is in doubt.

The motion was lost by a rising vote of twenty-seven ayes to twenty-two nays.

The President: Now the amendment will be in order that it be postponed until tomorrow afternoon.

Mr. Atkinson: I move as a substitute that it be made a special order for Wednesday afternoon.

A Voice: That is tomorrow! (Laughter).

The amendment prevailed, and the consideration of the report was postponed until Wednesday.

The Clerk reads the report of the Committee on Name, Boundary and Seat of Government, as follows:

Sioux Falls, July 23, 1889.

MR. PRESIDENT:—

Your Committee on Name, Boundaries and Seat of Government, to whom was referred Article I of the Sioux Falls Constitution, have considered the same and respectfully recommend that Section 1 of said Article I be amended by inserting the word "South" before the word Dakota,

That Section 2 of said Article I be amended by inserting the word "South" before the word Dakota, and by striking out the words "Forty-sixth parallel of north latitude; thence west along the Forty-sixth Parallel of north latitude," and in lieu thereof insert the words, "Seventh Standard Parallel; thence west on the line of the Seventh Standard Parallel produced due west;" and therefore respectfully recommend the following as Article I of the Constitution, the same being in accordance with the "Omnibus Bill."

ARTICLE I.

NAME AND BOUNDARY.

SECTION 1. The name of the State shall be South Dakota.

SEC. 2. The boundaries of the State of South Dakota shall be as follows: Beginning at the point of intersection of the western boundary line of the State of Minnesota with the northern boundary line of the State of Iowa, and running thence northerly along the western boundary line of the State of Minnesota, to its intersection with the Seventh Standard Parallel; thence west on the line of the Seventh Standard Parallel produced due west to its intersection with the Twenty-seventh Meridian of longitude west from Washington thence south on the Twenty-seventh Meridian of longitude west from Washington to its intersection with the northern boundary line of the State of Nebraska; thence easterly along the northern boundary line of the State of Nebraska to its intersection with the western boundary line of the State of Iowa; thence northerly along the western boundary line of the State of Iowa to its intersection with the northern boundary line of the State of Iowa; thence east along the northern boundary line of the State of Iowa to the place of beginning.

Respectfully submitted,

M. P. STROUPE, Chmn.
S. A. WHEELER,
W. T. WILLIAMS,
E. G. EDGERTON,
W. M. VAN EPS.

Mr. Davies: I move that this report be made a special subject for consideration tomorrow at the afternoon session.

Motion seconded.

Motion prevailed.

The Clerk read the second report of the Committee on Name, Boundary and Seat of Government, as follows:

SEC. 3. Should no place voted for at said election have a majority of all votes cast upon this question, the Governor shall issue his proclamation for an election to be held in the same manner at the next general election to choose between the two places having received the highest number of votes cast at the first election on this question. This election shall be conducted in the same manner as the first election for the permanent seat of government, and the place receiving the majority of all votes cast upon this question shall be the permanent seat of government.

M. P. STROUPE, Chmn.
S. A. WHEELER,
E. G. EDGERTON,
W. T. WILLIAMS,
W. M. VAN EPS.

Mr. Stroupe: I move that the consideration of this report be made the special order for tomorrow.

Which motion prevailed.

The President; I think that the report of the Legislative Committee is not in accordance with the rule; if there is no objection, I will refer it back to the Committee to report it in form in which the rule provides. There being no objection, it will be so referred.

The President: There being no business under the call of Report of Select Committees, or Consideration of Reports of Select Committees or Presentation of Resolutions or Propositions Relating to the Constitution, we will proceed to the special order for the day; the first one is the Report of the Committee on Impeachment and Removal from Office. The Clerk will read that report.

Sioux Falls, Dak., July 19, 1889.

MR. PRESIDENT:—

Your Committee on Legislative to whom was referred Article XVI, entitled, "Impeachment and Removal From Office", have considered the same and have compared said Article XVI with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article XVI of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the change thereto authorized by the Omnibus Bill.

ARTICLE XVI.

SECTION 1. The House of Representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment.

SEC. 2. All impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the Governor or Lieutenant Governor is on trial the presiding judge of the Supreme Court shall preside.

SEC. 3. The Governor and other State and Judicial officers except County Judges, Justices of the Peace and Police Magistrates, shall be liable to impeachment for drunkenness, crimes, corrupt conduct or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under the State. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial judgment and punishment according to law.

SEC. 4. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office or for drunkenness or gross incompetency in such manner as may be provided by law.

SEC. 5. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

SEC. 6. On trial of impeachment against the Governor the Lieutenant Governor shall not act as a member of the Court.

SEC. 7. No person shall be tried on impeachment before he shall have been served with a copy thereof at least twenty days previous to the day set for trial.

SEC. 8. No person shall be liable to impeachment twice for the same offense.

A. B. McFARLAND,
Chairman.

S. A. RAMSEY,
W. M. COOK,
R. F. Lyon.

The President: What is the pleasure of the Convention with regard to the report of the Committee on Impeachment?

Mr. Davies: I move that we adopt the report. (Motion seconded.)

Mr. Hole: I wish again to suggest a point that was raised last week sometime, and that is, whether these reports have been compared with the Constitution itself; if they have not, I am opposed to the motion; I have noticed a great many errors have crept in; I find the compared work of the Committee is very little better than the book they compared them with; sometimes not so good; it is well known by the members of the Convention that there are many mistakes, and if these are compared with the mistakes, the

second comparison is worse than the first- I think it is improper that these be reported as having been compared unless having been compared with the Constitution, not with the garbled copies.

Mr. Huntley: I understand it is the duty of the Committee on Phraseology and Arrangement to compare every report with the copy which is in their hands and if there is any departure from that, it is part of their duty to make any such corrections of mistakes as they may find.

Mr. Hole: Then why in the name of honesty, is not the report, so reported; why do they compare them with the garbled copies and find that they compare favorably with them? We are stultifying ourselves in making these reports. I am objecting to the reports being made as having been compared with the original and found correct. I object.

Mr. Willis: This Convention proceeds upon the assumption that these committees are honest. If these committees have not made these comparisons they ought to report.

Mr. Stoddard: The way I understand it, these so-called articles constitute the Constitution itself, of 1885. I do not see any necessity, or any sense of each report coming in in this way; we have got only to compare it and find it in conformity with the Omnibus Bill and also with the Sioux Falls Constitution; we suppose that these articles are the Constitution itself; it is supposed that these printed copies constitute the Constitution and we have not each one taken the time to look through the engrossed copy; that is in the hands of the President, we have not had an opportunity, we remember too, undoubtedly it will go to the Committee on Phraseology and it will be looked after there; all that we report is that we find such and such an article a part of the Constitution and then it goes to the other committees.

Mr. Matson: I suggest we are becoming a little too critical; I do not understand that we, any of us, have seen the copy of the original Constitution, or have had it before us when we voted upon the Sioux Falls Constitution.

Mr. Young: I do not think that the gentleman was talking advisedly, that objected, when he used the expression, "garbled copy" of the Constitution. These committees were comparing these reports by the corrected copy, made by the special Committee on Errata. I do not think he spoke authoritatively when he says

these reports have been compared with garbled copies; they have been compared with the corrected copy, I think in every instance.

Mr. Hole: I do not want to raise a breeze on this; I merely wanted to call attention to what seemed to me a serious matter. We were making reports and certifying that these are correct and there has not been one report yet that has gone in, or but very few as I am informed by the clerks but what have been found to be wrong though all certified by the Chairman of the Committee. That has been shown by every report here, and that every one of them, or nearly all have been found to be wrong. Our Committee have not made a report and we have not been in a position to stultify ourselves at all: I merely want to raise this question; we ought to correct that certificate that is made,—the report that is made; I think these will have to be compared with the original copy; must be. I think the record should be made to agree with the facts.

Mr. Hartley: I call attention to the next article; Article VII is reported as being made correct, while it is not; the very next Article reported by the Committee as being correct is not correct. That is the reason that we call attention to the fact that they are reporting matters which are not correct; we are making up a record that is not correct. There is one copy which reads one way, and the other printed one which reads differently; some reports follow one and some reports follow another; in many cases they are not following what is the Constitution. Judge Edgerton has either refused or failed to produce the original copy here. I think we are entitled to the possession of the Constitution we are working on; we ought to have it here; so that when any of these questions arise we can turn to it immediately. With regard to what the gentleman from Lake county (Mr. Young) said in law, a copy that is a copy would not be received in court and the fact that they compared the report that they are producing here with another copy is no evidence that it is correct. We should have the Constitution here every day through working hours now.

Mr. Sterling: I hardly think that any of the errors that may be found in any of these copies are any more than what may be termed clerical or typographical errors. I think these errors come properly under the notice of the Committee on Phraseology and Arrangement and whether the different Committees compare their reports with one copy or another copy of the Constitution, I think

it will be found to be substantially correct. And the only inaccuracies will be in the nature of typographical or clerical errors and it is peculiarly the business of that Committee to correct errors of that kind. They will not find those errors alone in these copies which we use; if I understand it rightly they will be found in the original Constitution itself; I think the duties of that Committee will extend to what is plainly a clerical error and that they will not submit their report until they have made such comparison. I think these reports must be taken as substantially correct, and that when the committee certifies that they have compared them and say these copies are copies of the different articles that they have examined that we must so take it, until the Committee on Arrangement and Phraseology take it and pass upon the simple clerical errors.

Mr. Hartley: I think after we have called the attention of the Committees to it that they have acknowledged that they have made errors and used copies that were not correct.

(Calls of question from different portions of the house.)

The motion reaching a vote was adopted and the report of the Committee on Impeachment and Removal from Office was declared adopted.

The Chairman: I will now state for the information of the Convention, I have been unable to get to work with the Committee but made arrangements this morning by which the Committee on Arrangement and Phraseology will take these reports and compare them with the original Constitution and see if there are any errors; as soon as Judge Edgerton returns and we have access to the original Constitution, that Committee will commence its work; I presume it will be able to do so tomorrow; I don't know when the Judge expects to return.

The Chairman: The next business to come before the Convention will be the consideration of a report of the Committee on Elections and Right of Suffrage; there is a little error in that report; it calls the attention of the Convention to the fact that there is apparently a clerical error in Section 9. I will state to the members of the Convention that if they have not the printed Journal of the 16th day's proceedings before them, that we have extra copies here.

Mr. Fellows: I move that the report of the Committee be

amended by putting the word "school" after the word "for" and before the word "purposes" as found in the third line from the bottom of page three of the 16th day's proceedings.

The Clerk reads report of Committee on Elections and Right of Suffrage.

MR. PRESIDENT:—

The Committee to whom was referred Article VII, entitled "Election and Right of Suffrage", respectfully report, that we find the same in conformity with the Enabling Act, and recommend that no alterations be made.

ARTICLE VII.

ELECTIONS AND RIGHT OF SUFFRAGE.

SECTION 1. Every male person resident of this State who shall be of the age of twenty-one years and upwards, not otherwise disqualified, belonging to either of the following classes, who shall be a qualified elector under the laws of the Territory of Dakota at the date of the ratification of this Constitution by the people, or who shall have resided in the United States one year, in this State six months, in the county thirty days and in the election precinct where he offers his vote ten days next preceding any election, shall be deemed a qualified elector at such election.

FIRST: Citizens of the United States.

SECOND: Persons of foreign birth who shall have declared their intention to become citizens conformably to the laws of the United States upon the subject of naturalization.

SEC. 2. The Legislature shall at its first session after the admission of the State into the Union, submit to a vote of the electors of the State the following question to be voted upon at the next general election held thereafter, namely: "Shall the word 'male' be stricken from the article of the Constitution relating to election and the right of suffrage." If a majority of the votes cast upon that question are in favor of striking out the word "male", it shall be stricken out and there shall thereafter be no distinction between males and females in the exercise of the right of suffrage at any election in this State.

SEC. 3. All votes shall be by ballot, but the Legislature may provide for numbering ballots for the purpose of preventing and detecting fraud.

SEC. 4. All general elections shall be biennial.

SEC. 5. Electors shall in all cases except treason, felony or breach of peace, be privileged from arrest during their attendance at elections and in going to and returning from the same. And no elector shall be obliged to do military duty on the days of elections, except in time of war or public danger.

SEC. 6. No elector shall be deemed to have lost his residence in this State by reason of his absence on business of the United

States or of this State, or in the military or naval service of the United States.

SEC. 7. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed therein.

SEC. 8. No person under guardianship, non compos mentis or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony be qualified to vote at any election unless restored to civil rights.

SEC. 9. Any woman having the qualifications enumerated in Section 1 of this article, as to age, residence, and citizenship, and including those now qualified by the laws of the Territory, may vote at any election held solely for school purposes, and may hold any office in this State, except as otherwise provided for in this Constitution.

W. M. STODDARD,
W. M. COOK,
C. R. WESCOTT,
JOHN SCOLLARD,
J. F. WHITLOCK,
HARRY T. CRAIG.

Which motion prevailed.

The Chairman: The question now recurs upon the question to adopt the report of the Committee on Elections and Right of Suffrage as amended.

Which motion prevailed and the report of said Committee was declared adopted.

The Chairman: The next report is a report of the Committee on Federal Relations and Ordinance.

The Clerk read said report as follows:

MR. PRESIDENT:—

Your Committee on Federal Relations, to which the proposition or resolution presented by Mr. Boucher, relating to compact with the United States, was referred, would respectfully report that we have had the same under consideration and have decided to report herewith "An Ordinance irrevocable without the consent of the United States and the people of this State, relating to Religious Toleration, Public Lands, Taxation of Lands, Debts of the Territory of Dakota and Public Schools", and would recommend the passage of said Ordinance.

Your Committee would further report that we have had under consideration Article XXII of the Sioux Falls Constitution and find the same is defective because it does not contain all the provisions required by the Omnibus bill and we would therefore recommend that the said Article XXII be stricken out of the Constitution.

We would further report that the said ordinance contains all the provisions of said Article XXII and such additional provisions, not contained in said Article XXII as are required by the Omnibus Bill, so called, or Enabling Act.

AN ORDINANCE, irrevocable without the consent of the United States and the people of this State, relating to Religious Toleration, Public Lands, Taxation of Lands, Debts of the Territory of Dakota and Public Schools.

Be it ordained by the Constitutional Convention of the State of South Dakota:

FIRST: That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

SECOND: That the people inhabiting this State do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian Tribes; and until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and the said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without this State shall never be taxed at a higher rate than the lands belonging to residents of this State: that no taxes shall be imposed, by this State on lands or property therein belonging to, or which may hereafter be purchased by the United States or reserved for its use. But nothing herein shall preclude this State from taxing, as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any other person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation but that all such lands shall be exempt from taxation by this State so long and to such extent as such act of Congress may prescribe.

THIRD: That the State of South Dakota shall assume and pay that portion of the debts and liabilities of the Territory of Dakota which the joint commission appointed by the Constitutional Conventions of North Dakota and South Dakota have adjusted and agreed upon as the just proportion of said debt and liabilities to be assumed and paid by South Dakota. The agreement reached respecting said debts and liabilities is incorporated in the Constitution of this State and this State obligates itself to pay its proportion of such debts and liabilities, as therein specified, the same as if they had been created by this State.

FOURTH: That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all children of this State and free from sectarian control.

FIFTH: That this Ordinance shall be and remain irrevocable without the consent of the United States and the people of this State.

W. H. MURPHY,
C. A. MOULTON,
C. G. SHERWOOD,
C. J. B. HARRIS,

Mr. Dickinson: Is this Ordinance an article of the Constitution? It seems to me it ought to be passed through the hands of the Schedule and Ordinance Committee; I move that it be referred to that Committee.

Mr. Jolley: This is a very peculiar article of the Constitution; I do not think that this Committee has used proper care. So far as the suggestion made by the gentleman from Day (Mr. Dickinson) is concerned, there is such a provision in the Schedule. And here is the objection that I have; it gives all lands to the Indian and Indian Tribes and puts that land under the jurisdiction of the United States, in other words if there is any Indian owning any land in the Territory of Dakota, it cannot be used for public purposes; you cannot run a highway across it only by going to Congress; the point I wish to call the attention of the Convention to is this Ordinance irrevocable without the consent of the United States and the people of this State. The inquiry in my mind is this; if you pass such an ordinance as this and put it in the Constitution of South Dakota, you fix it so the only way it can be revoked so far as the State of South Dakota is concerned and so far as the United States is concerned is by act of Congress; I don't know but what we would have to call another Constitutional Convention in order to change this.

The Chairman: Is there any second to the motion of the gentleman from Day?

Mr. Young: I second the motion.

The motion prevailed and the report of the Committee on Federal relations was referred to the Committee on Schedule and Ordinance.

The Chairman: The next order of business is consideration of the memorial to Congress with relation to the securing a com-

mission for the purpose of making a geological and hydrographic survey of the State. Clerk reads the report as follows

MR. PRESIDENT:—

Your Committee on Federal Relations to which was referred the resolution relating to a memorial to Congress for the appointment of a commission for the purpose of making a geological and hydrographic survey of the State would respectfully report that we have had the same under consideration and have decided to report the accompanying memorial and recommend its passage.

A MEMORIAL to the Congress of the United States requesting the appointment of a Commission for the purpose of making a geological and hydrographic survey of the State.

To the Congress of the United States:

The Constitutional Convention of the State of South Dakota, duly assembled, would respectfully represent to your honorable body that it has been demonstrated that within the limits of South Dakota there exists what is known as an artesian basin or system, but that its extent has not been fully determined. And that a desire is being generally expressed by the people of South Dakota that the matter be investigated and the extent of the system fully determined and its availability for the purposes of agriculture and manufactures be determined.

Now, therefore, the said Convention would respectfully memorialize your honorable body and request you to appoint at the earliest possible time a Commission for the purpose of making and with power to make a thorough and complete geological and hydrographic survey of the State, including mineralogical formation of the Black Hills and the artesian basin of South Dakota, and that you make the necessary appropriations therefor.

W. H. MURPHY,
C. A. HOULTON,
C. G. SHERWOOD,
C. J. B. HARRIS.

The Chairman: What is the pleasure of the Convention in regard to this memorial?

Mr. Davies: I move you, Mr. President, that we adopt this memorial.

Motion seconded.

Mr. Dickinson: I would ask if there does not already exist a geological survey of this section of the United States, and further I would inquire whether or not, after we are admitted as a state, the government would not simply refer it back to us, and say, make such surveys as you desire.

Mr. Hartley: My understanding is that when we become a

state these matters will have to be attended to by ourselves; the United States make these surveys for the territories and not for the states.

Mr. Clough: I recall being on a train crossing the State of Wisconsin from Madison to Janesville and meeting a gentleman who said he represented the United States Surveying Service; he said he was sent out by the Smithsonian Institute at the expense of the United States, to a certain section of the country I spent the larger part of the day with him and I understood from him that the government through the Smithsonian Institute carries on these surveys. I know in the State University we have been discussing this subject and we have the understanding that while we will do something ourselves as a state, the United States Government through the Smithsonian Institute will carry on these surveys such as we ask today.

Mr. Davies: In view of the importance of this question it can do no harm making the application to Congress; I do not think there is any question about the authority of the United States to make this survey; this irrigation subject and the matter of the artesian well system is an important subject. And the eyes of the people of this United States are upon that question and if there is anything we can do to help ourselves and our sister states in this matter of irrigation let us do it; we certainly can try and no harm can be done and perhaps great good will result.

The matter under consideration reaching a vote the motion prevailed and the memorial was declared adopted.

The Chairman: The next is the report of the Committee on Education and School Lands. With regard to that report I would say, I believe Mr. Humphrey is Acting Chairman and when he went away he asked me to have that held open until his return; I will suggest further that that is a very important report. If I was on the floor of the Convention I would ask that the Convention hold it over until tomorrow.

Mr. Huntley: I move that the consideration of this report be postponed until tomorrow.

The motion was duly seconded and adopted.

The Clerk read the report of the Committee on State Institutions and Public Buildings.

Sioux Falls, South Dakota, July 18, 1889.

MR. PRESIDENT:—

Your Committee on State Institutions and Public Buildings, to whom was referred Article XIV, entitled, "State Institutions" have considered the same and compared said Article XIV with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill" and have instructed me to report the following as Article XIV of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill. The insertion of the word "South" before Dakota in Section 1 comprises all the changes made.

ARTICLE XIV.

STATE INSTITUTIONS.

SECTION. 1. The charitable and penal institutions of the State of South Dakota shall consist of a penitentiary, insane hospital, a school for the deaf and dumb, a school for the blind and a reform school.

SEC. 2. The State institutions provided for in the preceding section shall be under the control of a State Board of Charities and Corrections, under such rules and restrictions as the Legislature shall provide; such Board to consist of not to exceed five members, to be appointed by the Governor and confirmed by the Senate, and whose compensation shall be fixed by law.

SEC. 3. The State University, the Agricultural College, the Normal Schools, and other educational institutions that may be sustained either wholly or in part by the State shall be under the control of a board of nine members, appointed by the Governor and confirmed by the Senate, to be designated the Regents of Education. They shall hold their office for six years, three retiring every second year.

The Regents, in connection with the faculty of each institution shall fix the course of study in the same.

The compensation of the Regents shall be fixed by the Legislature.

SEC. 4. The Regents shall appoint a board of five members for each institution under their control, to be designated the Board of Trustees. They shall hold office for five years, one member retiring annually. The Trustees of each institution shall appoint the faculty of the same and shall provide for the current management of the institution but all appointments and removals must have the approval of the Regents to be valid. The Trustees of the several institutions shall receive no compensation for their services, but they shall be reimbursed for all expenses incurred in the discharge of their duties, upon presenting an itemized account of the same to the proper officer. Each Board of Trustees

at its first meeting shall decide by lot the order in which its members shall retire from office.

SEC. 5. The Legislature shall provide that the science of mining and metallurgy be taught in at least one institution of learning under the patronage of the State.

F. G. YOUNG, Chmn.
W. M. VAN EPS,
C. G. HARTLEY,
J. DOWNING,
CHAUNCEY L. WOOD,
C. BUECHLER,
R. A. SMITH,
J. F. WOOD.

The Chairman: What is the pleasure of the Convention in regard to this report?

Mr. Wescott: I move that the report be adopted.

Motion was duly seconded and by vote of the Convention was declared adopted.

The Chairman: The next report is the report of the Committee on Exemptions.

The Clerk read said report as follows:

Sioux Falls, Dakota, July 18, 1889.

MR. PRESIDENT: . . .

Your Committee on Exemptions to whom was referred Section 4, Article XXI, entitled, "Exemptions", have considered the same and have compared said Section 4, in Article XXI with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill" and have instructed me to report the following as Section 4, Article XXI of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the "Omnibus Bill, without any amendments.

SEC. 4. EXEMPTIONS.—The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws exempting from forced sale a homestead, the value of which shall be limited and defined by law to all heads of families, and a reasonable amount of personal property, the kind and value of which to be fixed by general laws.

C. BUECHLER, Chmn.
J. A. FOWLES,
S. S. PECK,
GEO. H. CULVER,
GEO. C. COOPER,
S. D. JEFFRIES,
M. R. HENINGER,
C. G. COATS.

Mr. Sterling: I move the adoption of the report.

Motion duly seconded and by vote of the Convention the report was adopted.

The Clerk reads the report of the Committee on Banking and Currency.

Sioux Falls, Dakota, July 19, 1889.

MR. PRESIDENT:—

Your Committee on Banking and Currency to whom was referred Article XVIII, entitled, "Banking and Currency," have considered the same and have compared said Article XVIII with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article XVIII of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill.

ARTICLE XVIII.

BANKING AND CURRENCY.

SECTION 1. If a general banking law shall be enacted it shall provide for the registry and countersigning by an officer of this State of all bill or paper credit designed to circulate as money, and require security to the full amount thereof, to be deposited with the State Treasurer, in the approved securities of the State or of the United States to be rated at ten per cent., below their par value, and in case of their depreciation the deficiency shall be made good by depositing additional securities.

SEC. 2. Every bank, banking company or corporation shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter close its business, but shall have corporate capacity to sue and be sued until its business is fully closed; but the Legislature may provide by general law for the reorganization of such banks.

SEC. 3. The shareholders or stockholders of any banking corporation shall be held individually responsible and liable for all contracts, debts and engagements of such corporation to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such share of stock and such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders.

J. G. DAVIS, Chmn.
S. A. RAMSEY,
S. B. McFARLAND,
S. F. HUNTLEY,
C. J. BUECHLER,
C. S. GIFFORD.

Mr. Young: I move the adoption of the report.

Motion duly seconded.

Mr. Hartley: If you will excuse me, I notice that in 1885, was submitted Sec. 2, a section that I do not clearly understand; is it intended to relate to all banks?

The Chairman: I cannot answer that.

Mr. Hartley: If it is intended to reach all banks we are reaching too far; if it is intended to what we call State Banks it is all right.

Mr. Davies: The Omnibus Bill does not permit us to know anything about it; it is simply a question of changes.

The motion to adopt prevailed.

The Clerk next reads the report of the Committee on Seal and Coat of Arms as follows:

Sioux Falls, Dakota, July 19, 1889.

MR. PRESIDENT:—

Your Committee on Seal and Coat of Arms, to whom was referred Section 1, of Article XXI of the Constitution, entitled, "Seal and Coat of Arms", having had the same under careful consideration, beg leave to report the following changes necessary to comply with the provisions of the Omnibus Enabling Act, to-wit: To insert the word "South" before the word Dakota in the two instances where the words "State of Dakota" appear; and we here-with report Section 1, Article XXI, with the change aforesaid incorporated therein, viz:

ARTICLE XXI.

MISCELLANEOUS.

SECTION 1. SEAL AND COAT OF ARMS.—The design of the great seal of South Dakota shall be as follows: A circle within which shall appear in the left foreground a smelting furnace and other features of mining work. In the left background a range of hills. In the right foreground a farmer at his plow. In the right background a herd of cattle and a field of corn. Between the two parts thus described shall appear a river bearing a steamboat. Properly divided between the upper and lower edges of the circle shall appear the legend, "Under God the People Rule", which shall be the motto of the State of South Dakota. Exterior to this circle and within a circumscribed circle shall appear, in the upper part the words "State of South Dakota". In the lower part the words, "Great Seal", and the date in Arabic numerals of the year in which the State be admitted to the Union.

And respectfully recommend the adoption of the change and the submission of the Article as amended.

C. A. HOULTON,
H. A. HUMPHREY,
JOHN SCOLLARD,
J. F. WOOD.

The Chairman: What is the pleasure of the Convention in regard to the report of the Committee on Seal?

A Voice: I move its adoption.

Said motion being submitted to a vote of the Convention was duly adopted.

The Chairman: The next report is the report of the Committee on Miscellaneous Subjects.

The report was read by the Clerk as follows:

Sioux Falls, Dakota, July 18, 1888.

MR. PRESIDENT:—

Your Committee on Miscellaneous Subjects, to whom was referred Article XXI, Section 3, beg leave to report that in our opinion no change is necessary in said section, which is hereto attached.

SEC. 3. OATH OF OFFICE.—Every person elected or appointed to any office in this State, except such inferior officers as may be by law exempted, shall, before entering upon the duties thereof, take an oath or affirmation to support the Constitution of the United States and of this State, and faithfully to discharge the duties of his office.

H. W. EDDY, Chmn.
W. L. WILLIAMS,
WM. COOK,
WM. STODDARD,
SANFORD PARKER,
C. G. HARTLEY.

The Chairman: What is the pleasure of the Convention with regard to this report?

Mr. Wood: I move that the report be adopted.

Motion seconded and reaching a vote, was duly adopted and so declared by the Chair.

The Chairman: The next report is the report of the Committee on Executive and Administrative.

The Clerk read the report as follows:

Sioux Falls, Dakota, July 18, 1889.

MR. PRESIDENT:—

Your Committee on Article IV of the Sioux Falls Constitution, "Executive and Administrative", have considered the same and have compared said Article IV with the Act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article IV of the Constitution, and that the same is in accordance with the Sioux Falls Constitution and the Omnibus Bill.

C. R. WESCOTT,
Chairman of Committee.

ARTICLE IV.

EXECUTIVE DEPARTMENT.

SECTION 1. The executive power shall be vested in the Governor who shall hold his office for two years; a Lieutenant Governor who shall be elected at the same time and for the same term.

SEC. 2. No person shall be eligible to the office of Governor or Lieutenant Governor except a citizen of the United States and a qualified elector of the State, who shall have attained the age of thirty years, and who shall have resided two years next preceding the election within the State or Territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

SEC. 3. The Governor and Lieutenant Governor shall be elected by the qualified voters of the State at the time and place of choosing members of the Legislature. The persons respectively having the highest number of votes for Governor and Lieutenant Governor shall be elected, but if two or more shall have an equal and highest number of votes for Governor or Lieutenant Governor, the two houses of the Legislature at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for Governor and Lieutenant Governor shall be made in such a manner as shall be prescribed by law.

SEC. 4. The Governor shall be Commander-in-Chief of the military and naval forces of the State, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection and repel invasion. He shall have power to convene the Legislature on extraordinary occasions. He shall at the commencement of each session communicate to the Legislature by message, information of the condition of the State, and shall recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature and shall take care that the laws be faithfully executed.

SEC. 5. The Governor shall have the power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment; provided, that in all cases where the sentence of the court is capital punishment, imprisonment for life or for a longer term than two years, or a fine exceeding \$200 no pardon shall be granted, sentence commuted or fine remitted except upon the recommendation in writing of a board of pardons consisting of the presiding judge, Secretary of State and Attorney General, after full hearing in open session, and such recommendation, with the reasons therefor, shall be filed in the office of the secretary of State; but the Legislature may by law in all cases regulate the manner in which the remission of fines,

pardons, commutations, and reprieves may be applied for. Upon conviction for treason he shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon or commute the sentence, direct the execution of the sentence or grant a further reprieve. He shall communicate to the Legislature at each regular session, each case of remission of fine, reprieve, commutation or pardon granted by him in the cases in which he is authorized to act without the recommendation of the said Board of Pardons, stating the name of the convict, the crime of which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.

SEC. 6. In case of death, impeachment, resignation, failure to qualify, absence from the State, removal from office, or other disability of the Governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

SEC. 7. The Lieutenant Governor shall be President of the Senate, but shall have only a casting vote therein. If, during a vacancy in the office of Governor, the Lieutenant Governor shall be impeached, displaced, resign or die, or from mental or physical disease or otherwise become incapable of performing the duties of his office, the Secretary of State, shall act as Governor until the vacancy shall be filled or the disability removed.

SEC. 8. When any office shall from any cause become vacant and no mode is provided by the Constitution or law for filling such vacancy, the Governor shall have the power to fill such vacancy by appointment.

SEC. 9. Every bill which shall have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve he shall sign it, but if not, he shall return it with his objection to the house in which it originated, which shall enter the objection at large upon the Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present shall agree to pass the bill, it shall be sent, together with the objection, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members present, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the Journal of each house respectively. If any bill shall not be returned by the Governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law, unless the Legislature shall by its adjournment prevent its return; in which case it shall be filed, with his objection, in the office

of the Secretary of State, within ten days after such adjournment, or become a law.

SEC. 10. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items and parts or parts of the bill approved shall be a law, and the item or items disapproved shall be void, unless enacted in manner following: If the Legislature be in session he shall transmit to the House in which the bill originated a copy of the item or items thereof disapproved, together with his objection thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

SEC. 11. Any Governor of this State who asks, receives or agrees to receive any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives, or offers, or promises his official influence in consideration that any member of the Legislature shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power or who offers or promises any member that he, the said Governor, will appoint any particular person or persons to any office created or thereafter to be created; in consideration that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either House of the said Legislature, or who threatens any member that he, the said Governor, will remove any person or persons from any office or position with intent to in any manner influence the official action of said members, shall be punished in the manner now, or that may hereafter be provided by law, and upon conviction thereon shall forfeit all right to hold or exercise any office of trust or honor in this state.

SEC. 12. There shall be chosen by the qualified electors of the State at the times and places of choosing members of the Legislature, a Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of School and Public Lands, and Attorney General, who shall severally hold their offices for the term of two years, but no person shall be eligible to the office of Treasurer for more than two terms consecutively. They shall respectively keep their offices at the seat of government.

SEC. 13. The powers and duties of the Secretary of State, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of School and Public Lands, and Attorney General shall be prescribed by law.

C. R. WESCOTT,

Chairman of Executive and Administrative Com.

Mr. Jolley: I move its adoption.

Motion duly seconded by Mr. Young.

Motion prevailed and the report was declared adopted.

Clerk reads the report of Committee on Manufactures and Agriculture as follows:

TO THE PRESIDENT OF THE CONSTITUTIONAL CONVENTION SOUTH DAKOTA:

We, the undersigned Committee on Manufactures and Agriculture, do hereby respectfully report that on careful examination we find that no changes are required in those parts of the Constitution, submitted to our inspection, in order to comply with the provisions of the Enabling Act passed by the Congress of the United States.

Sioux Falls, July 19, 1889.

T. W. P. LEE,
J. F. WHITLOCK,
R. A. SMITH,
T. F. DIEFENDORF,
C. S. GIFFORD,
E. G. EDGERTON,
C. R. WESCOTT,
R. F. LYONS,

Mr. Willis: I would like to ask the Chairman of that Committee for the chapter, verse and page where that report is; I am in favor of the Preamble.

Mr. Jeffries: I move that it be referred back to the Committee for amendment, to comply with the report of the Committee on Rules.

Mr. Davies: I move that it be referred to the Committee on Miscellaneous Subjects.

Mr. Young: I move its adoption as read.

Motion duly seconded.

Mr. Willis: What would be the number of the Article?

Mr. Fellows: I move that we postpone the consideration of that report.

Mr. Lee: I wish to make a remark. I was very careful regarding this Constitution; I went all through Spink County saying to my constituents that it was the best Constitution I ever read; I dislike very much to go back on my record. When I found out there was no such department here, I disliked that very much, inasmuch as that is a very important question. The hand that rocks our cradles rocks the world and the hand that holds the plow, feeds the occupants of the cradles. I wish to say right here

in public that this Convention made a mistake in appointing such a Committee, but I think we had better let it go; it looks well on paper and does no harm.

The report coming to a vote, was adopted, amidst laughter.

The Chairman: The next is the consideration of the report of the Committee on Military affairs.

The report was read by the Clerk, as follows:

Sioux Falls, Dakota, July 18, 1889.

MR. PRESIDENT:—

Your Committee on Military Affairs to whom was referred Article No. XV, entitled "Militia", have considered the same and have compared said Article No. XV with the Sioux Falls Constitution and the Act of Congress, known as the Omnibus Bill, and we report the following as article XV of the Constitution and that the same is in accordance with the Sioux Falls Constitution, and the changes thereto authorized by the Omnibus Bill, viz: The name of South Dakota in Sections One and Six in lieu of Dakota.

SECTION 1. The militia of the State of South Dakota, shall consist of all able-bodied male persons residing in the State, between the ages of 18 and 45 years, except such persons as now are or hereafter may be exempted by the laws of the United States or of this State.

SEC. 2. The Legislature shall provide by the law for the enrollment, uniforms, equipment and discipline of the militia and the establishment of volunteer and such other organizations, or both, as may be deemed necessary for the protection of the State, the preservation of order and the efficiency and good of the service.

SEC. 3. The Legislature in providing for the organization of the militia, shall conform, as nearly as practicable, to the regulations for the government of the armies of the United States.

SEC. 4. All militia officers shall be commissioned by the Governor and may hold their commissions for such period of time as the Legislature may provide, subject to removal by the Governor for cause, to be first ascertained by a Court Martial, pursuant to law.

SEC. 5. The militia shall in all cases, except treason, felony, or breach of peace, be privileged from arrest during their attendance at muster and elections, and in going and to returning from the same.

SEC. 6. All military records, banners and relics of the State, except when in lawful use, shall be preserved in the office of the Adjutant General as an enduring memorial of the patriotism and valor of South Dakota, and it shall be the duty of the Legislature to provide by law for the safe-keeping of the same.

SEC. 7. No person having conscientious scruples against

bearing arms shall be compelled to do military duty in time of peace.

Respectfully submitted,

E. E. CLOUGH,
W. H. MATSON,
T. W. P. LEE,
W. H. GODDARD.

Further:

There was submitted to your Committee a petition from Jacob Schmidt and other Russian citizens, asking that Section 7, of Article XV, be so amended as at all times exempt persons having such religious scruples from doing military duty; the Committee finds that it is not possible for this Convention to so annul said Section 7, Article XV.

E. E. CLOUGH,
Chairman Committee.

The Chairman: What is the pleasure of the Convention? I move that the report of the Committee on Military Affairs be adopted.

Motion duly seconded.

The Clerk read the further report by the same Committee with relation to a petition by Jacob Schmidt and other Russian citizens, exempting certain persons having religious scruples against bearing arms for military duty.

Mr. Clough: I would like to say that Mr. Williams (of Bon Homme) desired us to change the word "annul" found in the last line of the report to "amend".

The Chairman: If there is no objection, that amendment will be made. The Chair hears no objection, the report will be so amended. What is the pleasure of the Convention with regard to this report?

Mr. Dickinson: I move its adoption.

Which motion prevailed.

The Clerk next read the report of the Committee on County and Township Organization, as follows:

Sioux Falls, Dakota, July 20, 1889.

MR. PRESIDENT:—

Your Committee on County and Township Organization, to whom was referred Article IX, entitled, "County and Township Organization," have considered the same and have compared said article with the Sioux Falls Constitution and the Act of Congress known as the Omnibus Bill, and have instructed me to report the following as Article IX (9) of the Constitution, and that the same

is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill. That no changes are made excepting prefixing the word "South" to Dakota.

J. F. WHITLOCK,
Chairman.

The Chairman: What is the pleasure of the Convention?

A Voice: I move its adoption.

Motion duly seconded.

Mr. Dickinson: I see that it compares with the corrected copy except that the word "other" should be inserted in the second line of the Sixth Section, making it read "Such other counties"; I move that that correction be made in accordance with the original draft of the Constitution by inserting the word "other" in Section Six the second line, before the word "county"—"Such other county".

Which motion was duly seconded and by vote of the Convention, adopted.

Mr. Willis: In the Preamble to this report—in the last line but one, "That no changes are made except prefixing the word "South" to Dakota. I think that is not proper; the word "South" is not a prefix. I move that it be so amended instead of using the word "prefix" use the word insert.

Motion seconded.

The motion was given an affirmative vote by the Convention and the report was declared so amended.

A Voice: I move the adoption of the report as amended.

Mr. Atkinson: I would like to have the report as amended, read.

The Clerk reads the changes made in the original report.

The motion to adopt the report thereupon prevailed.

The Chairman: That completes the special order for today; what is the further pleasure of the Convention?

Mr. Clough: I would like to raise one question of privilege; I brought up from the University of Dakota, our State University, these catalogues, (indicating) and we specially ask the members to take them home for reference. I would like to say that we had three thousand printed and before they were out there was application for two thousand of them; it will show there is some demand for them; I would like to have you take them home.

Mr. Fellows: I would like to call the attention of the Con-

vention to the fact that the Journal for the sixteenth day ought to be approved; that is the day we adjourned without doing any business, and it was neglected. I move you, Sir, that it be now approved.

The motion prevailed upon coming to a vote.

The Chairman: I will have a letter read.

Chicago, July 19th, 1889.

CHAIRMAN OF THE CONSTITUTIONAL CONVENTION:

DEAR SIR:—

I mail you today a copy of Judge Altgeld's work on "Our Penal Machinery" which gives statistics and general information in regard to the different penal systems which it is thought might be of service to the members of the Convention; if you will kindly have the Clerk send us the names and address of the members of the Convention we will mail each a copy free of charge. The work is highly recommended by the ablest prison reformers of the country and is distributed in the interest of prison reform.

Very respectfully yours,

C. J. FORD.

Suite 53, 115 Monroe St., Chicago.

The Chairman: I will state to the Convention that I took the liberty this morning to request the Clerk of the Convention to send in the names as this is quite a large book and one I presume the gentlemen would like to have anyway; I have requested the Clerk to forward the names.

Mr. Whitlock: I move we do now adjourn.

Which motion prevailed and the Convention stood adjourned.

TWENTY-FIRST DAY.

Sioux Falls, Dakota, July 24th, 1889.

Two o'clock P. M.

Pursuant to adjournment the Convention was called to order by the President.

Prayer by the Rev. Mr. Willis.

Almighty God, we recognize that by Thy will princes rule and kings decree justice. Assured are we from the lives of men and from history that woe is that nation that makes its plans and directs its efforts without reference to the divine wisdom, and divine providence. Aid, Thou, us in the deliberations of this session; evermore guide and direct the efforts of this new State about to be, for the Redeemer's sake.

AMEN.

The minutes of the preceding day were read by the Clerk and approved.

Mr. Willis: I notice a repetition of the paragraph on the twelfth page before the report of the Committee on Seal and Coat of Arms; repetition of the whole paragraph on the same page.

The President: The Clerk will make the correction.

Mr. Sterling: I notice some clerical errors in the report of the Judiciary Committee. I would like to have the Clerk correct the third line of the first paragraph. * * *

Under the order of business, Presentations of Communications and Petitions, the Clerk read the following communication:

Huron, Dakota, July 22, 1889.

At a mass meeting of the citizens of Huron, Beadle County, on Monday evening, July 22nd, 1889, it was unanimously ordered that the Secretary of the mass meeting be requested to ask the Constitutional Convention, now in session at Sioux Falls, to adopt the Australian system of voting on the first day of October next, as expressed in the attached bill.

SIGNED: L. K. CHURCH,
Chairman.

The President: The Communication will be referred to the Committee on Schedule.

Unfinished business of the previous day.

— Reports of Standing Committees.

Mr. Van Tassel: The Congressional and Legislative Apportionment Committee are ready to report as soon as the report is signed.

Mr. Hole: The Committee on Schedule submit our report on the Prohibition clause,—Article XXIV, and also Article XXV—Minority Representation, which were submitted to us.

Mr. Goddard: The Committee on Revenue and Finance report no changes; our report has been compared with the report of the Committee on Errata and no changes were made.

The President: Consideration of reports of Standing Committees.

Reports of Select Committees.

Mr. Jolley; Your Committee on Rules have instructed me to report the following:

Sioux Falls, Dakota. July 24, 1889.

MR. PRESIDENT:—

Your Committee on Rules have instructed me to report that they recommend the two following additional rules for the government of this Convention, to-wit:

RULE 46.

That all claims and accounts against this Convention not paid by the United States, shall at once be presented to the Committee

on Expenses of the Convention, and shall be considered by that Committee and reported to this Convention; and after any claim is allowed by this Convention, a certificate of indebtedness shall be issued and signed by the President and Secretary of this Convention to the person to whom said claim is allowed, in substantially the following form:

Sioux Falls, Dakota,..... 1889.

That A. B. has acted as.....
of the Constitutional Convention held at Sioux Falls, Dakota, in
the year 1889, for..... days, at \$..... per day, and
is entitled to the sum of..... as allowed by said Con-
stitutional Convention.

..... President.

..... Chief Clerk.

RULE 47.

That each member and officer of this Convention shall have a certificate of indebtedness issued to him, as provided by Rule 46, at the same per diem as is allowed by the United States in the Omnibus Bill, for each and every day he attends this Convention, after the appropriation of \$20,000, made by the United States is ex-
pended.

JOHN L. JOLLEY,
Chairman.

Mr. Jolley: I move the adoption of these rules.

Which motion prevailed and Rules 46 and 47 were declared adopted.

The President: Presentation of Resolutions and Propositions Relating to the Constitution.

Special orders. The report of the Committee on Education and School Lands.

Judge Corson: I move that that report be laid over until tomorrow.

Which motion was duly seconded.

The President: It is moved that the report of the Committee on School Lands and Education be postponed until tomorrow and made a special order.

The motion prevailed.

The report from the Judiciary Committee was read by the Clerk as follows: (Here insert it.)

Mr. Sterling: I move the adoption of the report
Motion seconded.

Mr. Spooner: I move as a substitute that the report of the Judiciary Committee be adopted with the exception of the proposed division of the Territory included in the Third, Fifth and Sixth Judicial Circuits and that the Territory included in said proposed Circuits containing the following counties namely:

THIRD CIRCUIT: The Counties of Brookings, Deuel, Hamlin, Codington, Clark, Spink, Grant, Roberts, and all that part of the Whapeton and Sisseton Indian Reservation in this State, except that portion lying in Marshall County.

FIFTH CIRCUIT: The Counties of Kingsbury, Beadle, Hand, Hyde, Hughes, Sully, Potter, Faulk, and Stanley.

SIXTH CIRCUIT: The Counties of Day, Marshall, Brown, McPherson, Edmunds, Walworth, Campbell, and all the territory lying within said state not included in any other judicial circuit. I move this as a substitute. (Motion seconded.)

Mr. Dickinson: In behalf of Day County, I also wish to second the substitute.

Mr. Sterling: I desire to say upon this question, simply, that this matter was very fully discussed by the Committee on Judiciary. That at least three days were given to the discussion of the question of apportionment of these Districts. And that in addition to the three days' discussion in Committee, the matter has been freely discussed ever since the Convention met, by individual members of the Convention. That in addition to the views presented by the different members of the Committee before the Committee, there were the views presented by the different members of the Convention, who are not members of the Committee; and that a full and fair hearing was given to every one who had any adverse views to offer to the circuits as finally apportioned. I think Mr. Chairman, that no one can say but what there was the fullest and freest discussion and that this Committee went to work in earnest with the desire to do what was best for the entire State in the apportionemnt of these Judicial Circuits. And after all this discussion, after this thought upon the matter they have presented to you this report as the very best that could be done. There are somewhat different views in regard to this. Some counties are not wholly satisfied. It is no wonder to us that there may be two

or three counties among all these counties which, taking into consideration the matter of accessibility, are objecting, in that they are not joined to counties that they would desire to be joined to; it is no wonder that they should not be perfectly satisfied. Yet, taking the whole number of Circuits,—taking the population comprised within the different circuits, I do not think that a more satisfactory solution of this question can be presented than the one presented in this report.

Mr. Couchman: I rise briefly to say that I see a serious difficulty with the report. I come before this Convention with confidence, believing they are a fair body and men that want to do justice to all parts of South Dakota. Therefore, I speak with confidence when I come before you expecting that you will act upon that basis. I know that after the Committee had agreed upon this majority report in talking with the members of this Convention they said to me, (and no doubt to others) "Had we fully understood the matter as we now understand it, a different report would have been presented to the Convention". As the Chairman of that Committee has stated, we all had a hearing before that Committee. Yes, we went before that Committee, but before we were permitted to go before that Committee, what was done? They had met and had agreed to a certain report (Shall I say it!) had sworn to stand by it, even pledged to it, and that pledge was so strong that there was no breaking through it. Argument was unnecessary, reason was unavailing, they were bound on that report, and our meeting with them and objecting repeatedly and presenting our case was of no effect whatever. Then what could we do? Nothing; more or less than come before this Convention, which we believe and hope will seek to do justice to all portions of South Dakota. We are assembled for Constitutional purposes; it is not a political body, thank God. If it was that kind of a body, we would expect just about the same proceedings that have been gone through with by that Committee in making up the circuits for the Judicial Districts of this State. But we believe that in making up these circuits it should be done fairly; not an attempt by portions of the districts to arrange for the benefit of any particular man, nor set of men, or of some county. After the circuits are formed and any particular circuit is for a man they desire to come before the circuit, let him come, but do not let him be brought into prominence directly by a circuit formed for that express purpose. Now

believing gentlemen, that you are a fair-minded body, I want to show you where we are placed in this judicial(?) shuffle. And say if it is fair,—and say if it is right,—and say if it is just,—and say if it is honorable. Gentlemen, we are in the northwest corner of South Dakota, that is of the populous portion of the State; but one county lying north of us upon the river; the County of Campbell lies north of us. We are placed in a Judicial Circuit lying down the river; there are counties that would have over one hundred miles to ride down a wagon road, across prairie to the place where the heft of our business shall be done if this judicial circuit is formed. Over one hundred miles through the bluffs, down one bluff, through the ravines, and then up and down another and so on through three counties, down to where our business will be done. If we don't like this road we can go through Aberdeen, from Aberdeen to Huron, and from there we can go to Pierre. And in doing that, gentlemen, pass through a number of circuits before we get to our place of business. Gentlemen, is it fair, is it right? Do you want us to do it when we can have a judicial circuit here that we are all satisfied with, and pleased with, and anxious to have adopted? There is a tier of counties along the northern boundaries of this State that we believe every gentleman in the Convention are unanimous in forming into one judicial circuit. Here we have a road running by or through every county. We can go to that road, then go east, stopping off at Roscoe, Ipswich, Aberdeen, or wherever business and return the same day; shall we go to all this trouble, all of this expense and expense of time that will be necessary to do business in that Judicial Circuit that is there formed in this report? Gentlemen, I believe you will say no. Let me say further, when that country was settled up, we came to Aberdeen and then passed westerly towards the river, forming acquaintances as we went. Let us have a judicial circuit composed of men who are acquainted with each other, who like the ways of each other in business transactions, in judicial transactions and whatever relations they have, who are pleased with each other. We would like to remain together. We are not afraid of being swallowed by Aberdeen because it is a larger county than ours, not by any means; we go to Aberdeen, it is a large place to be sure and in Conventions, of course, they outnumber us three to one; they outnumber us in this Convention, but what do we care so long as they are honorable with us as they have always been. A better class of men

does not exist than lives in Aberdeen; when we go there we are treated courteously and kindly; to be sure, we pay our own bills; it is not forced upon us to have our bills paid; we pay our own bills; if in any other county the bills have taken a different course they never ask for them. We have no representative upon that Committee; but let me stop right here and say, and say conscientiously, that not a man from the whole section would have found one word of fault with the President of this Convention because we are not there represented; he supposed as we supposed, it mattered not where the Committee came from, they would be honorable, they would do justice by us, and every part of South Dakota; we did not care who was on the Committee; the Chairman will bear me out in saying that we did not embarrass him to get upon the Committee, not by any means. But when the Committee was formed we asked justice at their hands, but as we have shown you, we will have to leave it to this Convention to say shall we have it. Gentlemen, it lies with you to say whether this outrage shall be committed. Won't you think of this, gentlemen; let me ask you to act as you would have us act.

Mr. Davies: I am from the county adjoining Walworth County; just twenty miles this side of the county seat of Walworth County, where the judicial business of that county will be done. In the first place we do not assume in all human probability that all judicial business in that judicial district will be done in Pierre. Perhaps a few years ago, when we had one term of court every four or five years, it was necessary to go to Pierre up and down that river. We expect that some of this business will be done on the lines of railroad running right through the heart of this Judicial District. If you are not well versed in the geography and prospects of that section, let me say you will find three roads running in to the very center of those counties, and near to the river; and one running to Eureka, in McPherson County; so there are four railroads. And as is well known, others are looking that way; and at no distant day will be extended north and south, east of the river, through this proposed Judicial Circuit. Moreover, I have consulted with gentlemen of this Convention, from Campbell, from Walworth, from McPherson, and Faulk Counties and we find here, men from Walworth, Campbell, Potter and McPherson Counties who want to go right down the river. Compare the north half with the south half of the proposed district and is it for a moment

contended but that the direction of this Judicial business will be down south on the middle line of this District? Then we have better facilities as we are; then running across the whole north tier of counties of the Territory and make Aberdeen the center. I speak advisedly when I say that our people do not want to be joined to the Empire counties east of us. We know that if that is done the big fishes will swallow the little ones. We would be at the mercy of the large populous cities, Mr. President, I think we know positively that the opposition to this question is centered in two or three or four of the larger cities, the centers of wealth, influence, culture and wisdom. There are seventy-five of us scattered all over this Territory, each one of us representing communities whose interests are dear to us. And while we wish God-speed to every large city in this Territory including Sioux Falls, we don't want to surrender ourselves body and soul. What little minds we have, they are our own minds and we propose to stand right up for our rights and to say that it is right for us to have a square, compact judicial district composed of counties which are equal in wealth, influence and power and in cities. We want this show. We want simply what is right; what is just; what is honest between man and man; what is suitable to the judicial business for which we are now preparing. I am not one of that Committee, but I do not think that this Convention will for a moment question the wisdom, ability and honesty of that Committee. I have had the honor to attend one or two of their meetings and everything seemed to be fair and above board as anything could be. I believe there has been such work done by this Committee and so much of it, that any work we could do in this Convention by going at this business, everyone for himself, would not prove anywhere as near satisfactory to ourselves or to the people at large. I do not believe it would be possible for this Convention to prepare anything that would compare with this report. I am certainly in favor of adopting the report of the Committee, not the substitute.

Mr. Dickinson: I think we should all bear in mind as suggested by Mr. Couchman from Walworth County that we are here as a Constitutional body and that we should seek to do fairly and justly by all portions of the Territory, and certainly to give all persons a chance to be heard upon these questions as those upon which there are interested. I think we should bear this in mind also, Mr. President, that it is not merely a bare majority that we

should seek to get so that we could barely carry through the measures we are defending, but it should be unanimous, as near as possible. I wish every measure might be passed unanimously. In the Judiciary Committee there was a majority in favor of the report sent in. Quite a strong minority favored something like the apportionment of the Judicial District in the north part of the Territory and east of the river as outlined in the one suggested here today. I wish to suggest this; that in the apportionment of these three districts, while there may be a number of the counties who are satisfied, there are at least eight counties out of the twenty-three represented in that section that are thoroughly and completely dissatisfied; led to feel that they have been unfairly dealt with, though perhaps not intentionally. I would not be so rash as to accuse that Committee of designedly doing injustice. I think it may be possible, Mr. President, that in a desire to do well by the constituency represented by the gentlemen, they may have overlooked the interests of the constituency represented by us. Their own interests appear so large, ours appear proportionately small. It would be a serious mistake if this Convention should make any apportionment in that section of the State, which would leave eight counties so thoroughly dissatisfied. It would leave for instance, in the district comprising the Counties of Beadle, Spink, Brown and Marshall, which are very important counties, dissatisfied and displeased with the arrangement. When a question is raised in that district, it seems to me that it would not be very pleasant for Spink County for that one county to be placed in,—for the representatives of that county to be placed in and associated in that Judicial District. Those three counties could very consistently blame me for having brought them in that situation. That the three counties should be tied against their will; against their interests; against their convenience, and against their protests here. It seems to me that there can be certainly a more just, fair and reasonable arrangement than that. In the other districts represented by counties towards the east line of the State, the center of which we may call the city of Watertown, there would be two counties that would be thoroughly dissatisfied. One of them, the County of Kingsbury, whose representatives are here and can speak for themselves, and present petitions and letters from their constituents showing what they want, with reference to the main question, I will say when I came here I had no particular care

which way we were assigned, as I am not a lawyer, and —and I never had occasion to go to law. I never wish to do any other kind of courting than that which I did when I won my wife. It is my business, however, to represent my constituents here. I have received a petition signed by every member of the bar, and by the leading business men of our county, saying they wish to go into the district in which they are now under the present Territorial conditions; that is the counties on the north line, Day, Marshall, Brown, Edmunds, McPherson, Campbell and Walworth. There was perfect unanimity in these seven counties that that portion of the State be not disturbed. The day before I came here I wrote up to Judge Crofoot and he said: "We can do no better than endeavor to secure the present arrangement of this Judicial Circuit." Judge Crofoot has no interest in making any such statement as that as he will probably not remain Judge long. It would be for the convenience of those doing business in that district,—the convenience of the district to remain as arranged at present, and as desired by the report of the Minority Committee. The Judge said: "I can leave Aberdeen every morning and reach any part of the district." Suppose he had to do business from Watertown, he must go forty-five miles across the country by stage one way,—or he must go around by Elrod or around by Aberdeen and Redfield,—a rather expensive and thoroughly inconvenient way of doing business. Whereas, in the arrangement proposed by the substitute, we have free access to all parts of the district. I do not think anyone can blame us for desiring very much that arrangement. I wish to call the attention of the Convention to the argument I heard before the Judiciary Committee. I think I have heard nearly all the arguments in favor of the arrangement recommended by the Judiciary Committee. There has been nothing said of the inconvenience of counties. There is an element from outside the community interested, or political aims and ambitions who desire to be cut off from certain counties in order to have a better political field, but there is no political consideration whatever so far as I am aware of, that dictated the arrangement suggested in this substitute motion. We did not take into consideration the fact that anyone has a desire to be county judge, or because any particular city or county desires to be the center. Our's is a convenient arrangement to those interested, to the tax-payers, and I wish everyone here to bear in mind in the studying of their maps, the propo-

sition of the substitute does not place any of the counties in any disadvantageous position. It leaves them all arranged so that they have as easy and ready access by railroad as they have at the present time. If it is not upon the ground of convenience that it is urged by them, on what ground is it? If it is political ground, is it the issue that the Convention has got to get out of the way? And that, too, to the serious disadvantage of eight counties in that portion of the State in order to further the political ambitions of certain localities. I dislike very much, Mr. President, to refer to such things as this, but they are manifest in so many directions in the figuring that appears in these plans that it seems absolutely necessary in order that we make no failure in presenting the Constitution before these counties for adoption. I wish to say further in reference to the main question, after I had presented the opposition that a number of the best men had gone to the members of the Judiciary Committee. I have the assurance that they were satisfied, that they wanted the arrangement proposed to the west, that is Brown County, but they would not press the claim to our county and trusting in the pledge of the members of the Judiciary Committee that that would be the report, we paid no further attention to it until we found that it was too late to do anything towards affecting a change. That the arrangement had been made without my knowledge and without any deference to the wishes of the Representatives from Day County. After that there was nothing left to do but to present our desires before the Convention which we have done in these words.

Mr. Van Buskirk: This is the first office I think I have ever held in this Territory and perhaps the only one I shall hold in the State of South Dakota; therefore, I desire to submit to this Convention some of the considerations which moved the Committee in making this report. And before proceeding to that I desire to allude to two ideas or suggestions that were made prominent by two of our brethren of the Convention. It has been said by my brother, Couchman, that this Committee had got together and under a pledge had sworn (I think was the word) to hold to a particular line of action, with reference to this apportionment. If such a thing existed, it certainly did not come to my knowledge. I do not think any such thing ever did exist, and so far as its being a political question as suggested by Brother Dickinson, certainly I think as one of the members of the Convention, being as I am

numbered with the majority with no more hope of being elected judge in our district than one of the other members of the minority becoming President of the United States within the next five years, and there is no possibility of that; therefore, I think, so far as I am concerned, the members of the Convention can say at least, I have not been influenced by any political consideration. I believe there is in all three Democratic attorneys in that district which is proposed here. I am one of them and the others are young men, neither of whom aspire to that position. So I think, Mr. President, they will say at least, I have not been influenced by any such considerations in supporting this report. I have no means of judging of the future only by the past, and judging of the future by the past, I see no way for the proper administration of justice only to divide these districts of this Territory up into circuits as we have. It will become necessary to fully understand some of the reasons for this report, to go back a little to the history of the jurisprudence of this Territory. Originally we had three judicial districts. I did not come into the Territory until 1883, after that we had four judicial districts, and that stretched from the Missouri river to the north limit of the proposed State of South Dakota. The judges in these several districts had little penchant for business generally, because they were appointed to stay there as long as the President would let them. We had to hunt them; they did not come into our counties very many times to hold court. Well, in the process of time we got another district in the Fifth District, in which I have always practiced. And that stretches from the Minnesota State line to the Missouri river,—over two hundred miles long and one hundred and fifty miles broad, 120 at least, all in one district. During that time the judges of the court who had to sit in that district, notwithstanding the people of the Territory voted them \$1500 per year for expenses so they might hold their court throughout the various counties, sat down in the city of Huron and we have never seen them but once or twice since the Fifth District has been organized, at least in our county. Some counties near Huron had terms of five and six weeks at a time. We have not had five weeks of court in Codington County since I have been there, and I have lived there six years. Now, when we come to consider the condition of things it is no wonder that this people desire that we should have a Constitution framed here so that they could become organized as a state. I well remember, 'twas about the time I first came here

early in the history of my residence in this Territory, someone remarked: "A poor man cannot get justice without buying it"; and many times I know people do have to buy it. I know in my practice I had a client and all the property that she had in the world was seized in a chattel mortgage, and she had a good defense. What was the result? I had to go to the county seat of Brown County, or I may say it is now the county seat of Brown County. I got the case transferred to another court for trial. Judge Smith was upon the bench,—I got my order. The mortgagee moved to set aside this order on motion. Mortgagee was a man of wealth, and my client had not a dollar in the world. He served me with a motion to go down to the city of Pierre and we argued there that motion to set aside the order to give him an opportunity to set up a defense. I had to let this poor man lose everything he had, with which to earn his living or put my hand in my own pocket and buy railroad tickets and pay for hotel bills; I did it; I do not regret it today,—I do not expect pay; this is mentioned merely as an illustration of the condition of things which, Gentlemen of this Convention, moved the framers of the Constitution of 1885 to incorporate in the Constitution as adopted a clause that the judicial districts shall be composed of compact territory. And your Committee acted upon that instruction and we arranged the Districts and the connection with a view to an apportionment in such a way that the people might reach the courts and the courts might be near the people. Well, what further? It came to my knowledge before I came here that a combination had been formed to stretch out the districts from the State line of Minnesota to the Missouri river on the north, including the Counties of Grant, Roberts, Day, Marshall, Brown, Faulk, Edmunds, McPherson, Campbell, Walworth and Potter. On the other hand, down somewhere near the south line of this State, not a great ways from the sixth standard parallel, they got together and proposed to stretch out another district two hundred miles long, from the Minnesota State line towards the Missouri river, for some reason satisfactory to themselves. They proposed to let the Territory lying between these two lines take care of itself in the best way and manner that it could. I undertake to say that when they undertook to form a combination stretching out the district in that manner, it was a plain violation of the Constitution under which we are acting and adopted by the people on May last for our guidance and control. Well, the question arose,

what was to be done? A few attorneys, familiar with the legal business of the whole country, when appointed on this Committee, went to work to see how this matter could be divided up the best to accomodate the people and business of this State. It has been said here that it is easy to get from Day county over to Aberdeen. Now, as I said, I had supposed that the purpose and policy of this arrangement of the districts contemplated by the Constitution and which had been agreed upon by the Committee was to strike at the root of this idea that the people of a large section had to go for judicial purposes to Aberdeen or Huron. I supposed that that was the purpose of it. That the object in forming the district this way as my purpose was to fix it so every locality might rest upon its own merits and divide these districts so that we would not be compelled to go to some particular locality. My friend Dickinson from Day County, says it is much easier to go to Aberdeen than come to Watertown and perhaps some other locality. Let us look at it a minute. I do not understand that the county seat of Brown County is in Aberdeen. It is true that temporarily they prevented the moving of the records, as I understand the Supreme Court of the United States has decided that the county seat has never been properly removed from Columbia. Now, if the gentleman wishes to go from his county to Columbia in the morning he can get an early start and can go until four o'clock the next day to get to Columbia. He will have to be gone two days in spite of all he can do and if he does any business,—perhaps three, at a distance of seventy miles. Now again, I don't know any reason that this Convention should assume that the court is going to get down in a particular locality and make everybody go there, in the future as in the past. Suppose an attorney wants an injunction. The Judge should be holding court over in Campbell county on the Missouri river. How long would it take him to go over there to get his injunction and back again? About a week at the best he could do. Suppose the gentleman from Campbell county should conclude his interests were in danger and he wanted an injunction and the Judge happened to be holding court in Marshall county, how long would it take him to go up there? Probably about three days to go up there and back again. Now then, suppose this district shall remain with Day county in it as proposed by this Committee. He can leave his place of residence in the morning, and if court is sitting at Milbank, in Grant county, he can get up the

and have half a day to attend to business and get home the same day. If the court is sitting in Clark county, he can leave home in the morning and get down to Clark before noon and have some time to transact business between trains, and get back the same day. It is only about forty miles; he could get to Watertown about half past two o'clock in the afternoon, transact business and get back home the next day; and in either place he would not have any more miles of railroad to cover than to Aberdeen. I am bound to do the people of the county a kindness whether they appreciate it or not and vote this amendment down, because they will then have three places they can attend court as conveniently as they can at the county seat of Brown county. Now, what interest Marshall county can have, I do not know. They are there where they can get blockaded in the winter season; that is conceded. I am told that the purpose of this was to place the people in the various districts that are organized so they could get some kind of service. I have no way of judging of the future but by the past, and my past experience in this Territory and the experience that I had before coming to this Territory, for I have been practicing law about twenty-five years constantly, is that these outlying counties will always be neglected where farther removed from the larger counties, that they do not get the same service. It has not only been true here in this Territory, but the matter of observation with me in my practice before coming here, and we have no other means of getting at it only to say that in the future it will be as in the past. Therefore, let us put these counties together, let us put these rich counties lying west and up and down the James in a situation where they can elect their own judge. Then they will have no large counties to control the smaller ones and they will get equal service all through the district. I know of no other way to get at it. These are some of the considerations that have moved the Committee to make this report that has been made here. The attorneys upon this Committee have understood what the situation has been heretofore, and therefore we thought it was right to place these counties that have had no service at all in a situation where they would have a judge themselves and could get the service they have a right to demand, and which they would expect now. Something has been said about the convenience of getting from Kingsbury County to Huron. If the court should happen to be sitting in the district over at Pierre they would not

find it so convenient. It is only about thirty miles over to Brookings, about thirty miles from Clark, and about the same distance from Watertown. So they will have three counties very near by and if the Judge should happen to be over at Pierre, it would not be convenient for them at all. I apprehend that when this Constitution shall go into effect, and our Legislature shall have fixed the time of holding terms of court, I apprehend they will have two terms of court in each of these counties and perhaps a law term. I do not know any particular reason why the gentlemen have got to go out of their own county to attend to their business. I have practiced law for a period of twenty years in the First Judicial District of Wisconsin, with a very large practice. During all that time I never had to go out of my county but twice to argue a motion. I apprehend that when these gentlemen come to get their courts organized so that the judges are responsible to the people, they will never have to go out of their counties to argue their motions. It is merely a fancy based upon the iniquitous system existing in this Territory at the present time. Again, under this Constitution the Legislature may confer the power of Judge of Chambers upon the County Courts. That was done in Wisconsin. There was but one solitary order that the Judge could not grant,—he could not grant a new trial. There was not another motion that the judge had not the power to hear and determine. It was not necessary to go out of the county to argue a motion; and that would be the result here. You would not have to go out of your county to argue your motion. It is entirely a mistaken idea that the people of one county are going to be compelled to go to other judicial districts as heretofore. For instance, a gentleman may want an extension of ten or fifteen days to file a complaint in the case. All he has to do is to step over to the office of the county court and get his order. If he wants to make a complaint more definite and certain he can go before the county court and ask for an order, so if he wants an injunction the Legislature may confer the power here as there, under a similiar Constitution for him to grant injunctions. What would you go away from home for under these conditions? It is just simply a fancy based upon the iniquitous condition of things that is existing in this Territory, and which will not exist any longer than the moment you get a judge that is dependent upon the will of the people for his position.

Mr. Matson: I am not given to speech making yet I ask the

indulgence of the body for a few minutes. If I were anxious for newspaper notoriety and capable of it, there is doubtless material for a first rate speech. If I felt disposed to give full vent to the feeling of indignation with reference to certain matters in this connection, I think now is my opportunity, but I have no disposition to make a speech. I certainly am not disposed to question the purpose of any member of the Judiciary Committee because I know of one instance they were imposed upon. I feel that if I had been a member of that Committee I would resent it. I am not disposed either to speak here against the expressed wishes of people in Dakota—people whom I do not represent. I simply want to make a statement with reference to the feelings of the people I do represent in order that their wishes may be known,—I will allow them to speak for themselves. During the first week of the Convention, in order that I might act intelligently in reference to this matter, I wrote to a gentleman in Kingsbury county asking him to ascertain the wishes of the attorneys in reference to the judicial districts. I received for a reply something like this, in substance: "I have seen some of them but they do not seem to care how the matter goes. Have nothing to suggest." With that reply I rested perfectly easy until the Committee had got well under way, and I saw that the members from the different portions of the State were considerably exercised over their actions. I thought it very strange that our people were so unconcerned so I went to the Chairman of the Committee and asked if a communication had been received from Kingsbury County. He said, "Why, yes, there is a petition." I thought it was a little strange. So I went to the gentleman who had the petition and asked if I might see it. He let me have it and I read a petition signed by two gentlemen who claimed to be the Chairman and Secretary of a meeting. The County Treasurer of our county was upon the grounds at the time and he said, "That thing is a fraud". and "Such a meeting never was held." That was stated, in substance, before the Judiciary Committee. I received a telegram which I will read: "Watson and Schenain were the only persons at pretended meeting of Bar which asked that Kingsbury be attached to Codington. Every other person seen asks to go with Beadle.

JOHN A. OWEN,
J. C. GIBSON, Abstractor,
THOS. H. RUTH, Mayor."

In addition to that they sent a petition of remonstrance which I will read:

TO THE MEMBERS OF THE SIOUX FALLS CONSTITUTIONAL CONVENTION:

The undersigned attorneys and business men of Kingsbury County would respectfully represent that they are opposed to, and earnestly protest against being included in the Third Judicial District for the reason that the railroad facilities of said Circuit, so far as they affect Kingsbury County, are so limited that it would put the people of said county to great inconvenience and expense to reach other counties in said Circuit. And we further represent that we are in favor of a circuit composed of the counties of Kingsbury, Beadle, Hand, Hyde, Hughes and Sully, or a similiar circuit.

B. A. DUNLAP, Merchant,
THOS. H. RUTH, Cash. Kings. Co. Bank,
D. H. LOFTUS, Merchant,
H. J. HAMILTON, Merchant,
W. E. BROADBENT, Merchant,
S. B. OWEN, J. P.
WILL H. RUTH, Asst. Cash King. Co. B.
J. C. GIBSON, Abstractor,
R. N. BUNN, Dep. Co. Treas.,
GEO. C. DURKEE, County Auditor,
A. C. HANSON, Register of Deeds,
V. F. DAVIS, Dep. Register of Deeds,
PHILIP LAWRENCE, Probate Judge,
A. W. MULLEN, Postmaster,
E. S. Johnson, Atty.,
A. THOMAS, Atty.
C. L. DEWEY Clerk Dist Court Kings-
bury County,
A. N. WATERS, Attorney,
G. C. BRADLEY, Druggist,
F. R. JEWELL, Merchant,
D. R. WILLISON, Jeweler,
GEO. B. WILMARTH, Merchant,
D. W. WILMARTH, Merchant,
HOPP & McDONALD, Publishers,
C. H. TIHKHAM, Merchant,
C. P. INGALLS, Deputy Sheriff.
R. S. GLEASON, Co. Supt.,
P. W. MCKELLER, Physician,
W. L. SEELYE, Insurance,
J. CARL S—, Abstractor.

It was signed by thirty-one of our people, representing banking intstitutions, merchants and people in the vicinity of the city.

We have simply let these documents speak for themselves; we only speak with reference to Kingsbury County. I may not be able to speak intelligently on this question, for the reason that I never practiced law, not even as a client. So far as I am personally concerned, it is absolutely immaterial to me as to how these districts are formed. I do feel in duty bound to represent my people in this matter,—they have put these papers in my hands to be used here, publicly in the Convention. I think in justice, I ought to say further, there are no lawyers in our town in Kingsbury county, the only lawyer who does business in our village resides in Beadle County, just over the line. Our town is in both counties. This lawyer in Beadle County wrote me, but I have given it no consideration for the reason that he is on the Beadle County side of the line and not in the district that I represent. I also have a letter from a gentleman of Iroquois who requested that we do not "shoe-string" these districts, on the basis to have them as compact as possible, of course, his idea was,—to make the matter of expense and time as convenient as possible for the people. He left it to me that they cannot go to Watertown if they had any occasion to go to the legal center and transact business, short of three days. While they can go to Huron and return in one day, and have the whole day to transact business.

Mr. Davies: I do not want to take more than my portion of the time in this matter. I forgot something in the early part of the discussion. I have with me documents from members of the Bar of the northwest counties, interested in this matter which, if necessity compels me, I will bring forward before the Convention. I do not think they will be at all necessary. I will, however, intimate, they are private communications, but if they become needful I will read them. They are from attorneys,—I am an attorney myself practicing in that district—from ex-Judges and ex-District Attorneys, and from Clerks of Court. I have them with me in my pocket if they are wanted. I do not think it will be necessary to produce these documents to show fully the desires of the people in that particular district. With reference to the convenience of going to Aberdeen, it is not convenient to have to practice law before the Judge at Aberdeen. Judge Crofoot, who is a very able and competent judge, comes to Ipswich to hold court and goes home to sleep nights. If we had our own district and our own judge, who would be on the ground at all times—there are

times when a matter of three minutes or five minutes will enable a man to go home Saturday night with eight or ten witnesses instead of staying at the county seat at great expense. It is not convenient for any other counties but Brown County to come to Aberdeen to do judicial business with the judge residing out of that district and going home to sleep nights; no matter who he is; or how good a judge he is, it is a matter of great inconvenience to all the residents of that district.

Mr. Sherwood: I do not desire to make a speech, but I do desire to call attention to two or three matters in relation to the judicial districts as they are now, or rather as they were, in connection with some things that have been said by those who oppose the report of the majority of the Committee. I will say, that as a member of the Judiciary Committee, I believe it was the honest effort on the part of every member of that Committee, to consider only the interests and welfare of the people interested in the subdivision of this Territory into judicial districts. If there was any effort upon the part of any man to fix a district for any judge or any individual, I am not aware of that effort. If there was any compact or anyone sworn to it, I am not aware of that fact. But, as my friend Van Buskirk, who comes from the Codington County Bar and is in the same judicial circuit as myself, has said, before we left our homes, we understood that a meeting had been held in Aberdeen at which an agreement was made to change our three or four judicial circuits into three circuits, with one center at Aberdeen, and one center at Brookings, and one center somewhere else. Now, as far as Mr. Matson is concerned, I desire to state one thing, that he has stated the matter as I understand it; there is no question about it at the present time. But, one more thing,—when the Committee acted upon the matter they had before them a petition, a copy of which I have in my possession, which was in substance as follows: At a meeting of the Kingsbury County Bar, held at the office of James F. Watson, Mr. Watson was elected Chairman on motion, and the following resolution was adopted: **RESOLVED:** That it is the sense of the Bar of Kingsbury County that no change be made in the Judicial Circuit as fixed in 1885. I also have in my possession a letter to which the gentleman has referred; as he has stated to you when the Committee acted upon this matter,—the Judiciary Committee,—they had before them this letter from a banker of Iroquois and this petition; that was at

that time before them from Kingsbury County, with the exception of the incorporated statement of the County Treasurer of Kingsbury County, who appeared before the Committee, and said it was not the wish of the people of Kingsbury County. So much then, for that. I think I stated it accurately concerning the two parties who represented that Kingsbury County wishes that the Judicial Circuit should remain as it was under the Constitution of 1885. It has been stated that Judge Crofoot says, that the district could not be bettered as it now stands; I desire to say this, that all that country, Roberts, Day, Marshall, and west, Potter, and that Grant and Roberts Counties have sent down petitions which I hold in my hands (a letter from Grant County) signed by every member of their Bar, requesting that they be left in the third district as arranged. It is said by my friend from Day County that should the twenty-three counties comprised in the three or four Judicial Circuits be divided as suggested by the majority of this Committee, that there will be eight counties wholly or diametrically opposed to that apportionment. I say that should the district be apportioned as provided by the substitute there would be fourteen counties diametrically opposed to such apportionment.

Voces: Name them!

Mr. Sherwood: You name yours and I will name mine. It is a question now of whether you will displease the majority or the minority. As I understand it, it becomes our duty to divide these two Territories into circuits as near compact in form as possible. Now, what have they done? They have formed a triangle with four counties at the base and one county at the point of it. What is the object of that? What is the particular reason? Why, of course, no political reason,—not at all. Still I am by taking Aberdeen as the center, that if the two counties on the east should vote with Aberdeen, under the apportionment of delegates made at the last Convention,—if the two counties on the east of Aberdeen vote with Brown County, there is a majority of votes in that Circuit; if with the west, there is a majority of votes in that section. In other words, throwing influence or weight at the center, or Brown County, on either side will carry it in any way they choose. Of course, that is not political. I also observed that in every motion that came before the Judiciary Committee, for the other circuit, that the vote of Beadle County

with the vote of the counties to be, resulted just as they proposed in general. I think that is the case now.

Now, if there is anything political in any of these moves, I see how that circuit whereby one county standing in the center can control the circuit by combining with either end. I do not say that there is any political design for that purpose. I say further that when we first commenced arguing this question, the only argument offered before this Committee was to make the circuit as nearly accessible as possible by means of lines of railroads. But when the proposition was made to put Brown, Spink, Beadle and Miner Counties together,—and it was where two lines of railroads extended into that circuit, then they said: "We do not want that under any circumstances," whatever. If we are to act as we have not acted heretofore, so that they arrange states for the convenience of the cities, instead of the convenience of the people, then the report of the minority should be adopted. If we are to arrange for the people instead of the city of Aberdeen and the city of Huron, then the report of the majority should be adopted.

The President: Is the Convention ready for the question?

Mr. Davies: I ask that the report be read.

Mr. Dickinson: I desire to correct one misapprehension that these gentlemen are laboring under, that is with reference to the Aberdeen meeting and the combination formed there. This is the first I have heard of that suggestion.

Before we came down here, the delegates coming down here that would have to go through Aberdeen to come here, I presume, received a card as I did, signed by the delegates from Brown county, asking us to meet at the parlors of the Sherman House the night before we came down. Accordingly I was there and went into a room and was introduced and we shook hands all round and arranged as to what train we should take to come down here and then adjourned, without date. That is all the combination I know anything about. In reference to the judicial matters nothing thought of particularly at that time that I was informed of at least. So far as my knowledge goes, Aberdeen has not "poked her nose" as is sometimes said, into this business at all. Nobody has said anything except the delegates who had their duty to perform in this matter, no attempt to control in the interests of Aberdeen or Brown County. There are a good many other things, it seems to me ought to be said. I want to allude to just one thing

more,—that is the assertion made that fourteen counties would be opposed to the arrangement if the substitute was carried. There might be three counties that would be in some measure inconvenienced, but none of them, I think, but what would be more conveniently situated that the balance of the counties would under any other arrangement. The counties I think, as conveniently arranged as they could possibly be arranged,—as the plan proposes. It seems to me the convenience of the entire State should be kept in mind. The spirit of the arrangement was that it should be made convenient of access from all parts of the counties and district.

Mr. Hole: Mr. Chairman and Gentlemen of the Convention: When we were elected and sent to Sioux Falls as delegates, our duties then were to represent our constituents in our individual districts. When we were appointed on Committees in that Sioux Falls Convention, our duties then were to serve the Convention and to forget that we were representing merely one county, or one particular place. That was the position to be taken upon these Committees. I will say that in the main, that has been respected,—I will say that the Committees have arranged these districts to the satisfaction of everyone of the delegates from those districts every single one of them,—every one of them were consulted and we were acting the part of representatives of a dignified body.

But taking this map, we have a member of this Committee there, one there, and one there (indicating) and as you see, there is no power that can reconcile their claims.

This member gives his district and this member gives his, (indicating on map). It was probably unfortunate,—unintentionally so, but unfortunate that they happened to be placed right along together. They could hardly do otherwise than look out for self-interests; it was natural remembering that they came here representing individual constituents forgetting that when appointed upon committees they ceased to represent their constituents alone but fairly and honorably to represent all of Dakota. That much for that one point; I think that is the keynote. It all hinges with the north half of South Dakota. The whole disturbing trouble comes out of the desire to fix this in the Committee,—at least it looks that way to me. The purposes of these Judicial Districts is to satisfy and accommodate the people in their law business, in their legal difficulties; that is the purpose of it; let them be equitably and fairly divided.

When we came here it was talked all around by almost every lawyer in the Convention that we had not districts enough; that there were not sufficient districts; but as soon as these districts were formed I find that that was forgotten. In the east we divided it in this way, (indicating on map) leaving that one district more business, as I am informed by members who are acquainted with the facts,—more business in that one district than both the others; more than any other one district.

The political feature as referred to by my friend from Clark is an amusing one; of course there was no politics in what they have outlined, going on, he shows that Aberdeen makes a center, and Huron makes a center. I presume as soon as he studied Long's Legislative Hand Book he maybe satisfied he knows that Kingsbury and Beadle Counties have at least a majority.

Mr. Sherwood: I said Miner and Kingsbury.

Mr. Hole: That question is not before the Convention; Miner has never been mentioned, never been thought of in this connection, because Miner objected and would not come in and plainly said we are satisfied. That much for the politics of the whole arrangement. Yet, gentlemen, you will bear me out today that I am not as much of a politician as my friend from Clark (Mr. Sherwood) and I ask that you look this all over before you take what has been stated for facts.

Another thing; you say that these districts must be in compact form; it took a great while to pound into me the idea that a district one hundred and thirty miles long and thirty-six miles wide was compact; I can't see that it is compact; the idea of putting a district in that shape! As it now stands, so far as convenience is concerned, I will state this, and I do no fear contradiction or dispute, that in this district as arranged, making these seven counties as one district makes a district that when you come to go from one place to another that cannot be made up in matters of convenience any more desirable, by any other manipulation of these counties. Distance in miles does not figure it; it is time taken to get from one court to another. That is the fair equitable consideration; not the consideration perhaps that a railroad runs the entire length of the district and through every county in the district. From our county you can reach every point in the district, every day. In Brown County you have the same result,—in the county of Codington, Hamlin, Deuel, Brookings you have the same result.

And so far as stating the ground is concerned, I will defy contradiction of this statement, that outside of political and little personal matters, to have the report carried through, the Counties of Codington, Hamlin, Clark, Brookings and Deuel, Grant, never have complained of this District. Spink has some reason to remonstrate and they can sympathize with us. Potter, Faulk, Sully, Hyde and Hughes Counties, never have objected because they are compact in form. The people of Kingsbury County may, but they do not here today. I may state to you that Beadle County will be satisfied as it is best that it seems possible to get; I will say further that Hand County is satisfied and wants that arrangement. I will also say that Hyde County is satisfied and wants that, and so far as Hughes County is concerned it has not been heard from. Faulk County has no reasons for dissatisfaction because they can reach every other point conveniently so far as judicial services are concerned. The purposes and duties of this Convention is not to make up a circuit for any particular person or any particular clique, but to make up a circuit that would serve the common people and give them what they demand. Give them an expeditious and convenient district in which to do business. The railroad facilities in making up these districts have been studied in particular, and it was not made up on the spur of the moment,—it has been worked over. That was kept in mind from the first. I do not believe that this Convention, while it has got the power to do it, will do anything other than what the original motion contemplates. Now you have four counties that have more business than all the north districts in which there is not one single man satisfied,—not one single delegate, if I may use their words, not one single delegate satisfied. I have talked with the members from Spink County,—Chairman of the Committee, I have also talked with the other men, and they all say it does not suit them at all. Now I am confident that this Convention will not allow it to perpetrate this huge mistake and force this district upon the people, in which there is not one assenting voice. I know you will not do it. You are here this afternoon in the capicity of a jury,—you are listening to what is said upon either side, then make up your minds and do what is right, what is fair, and that is all that is asked at your hands. We do not wish any prejudice, any petty jealousy, any of the little feelings that we may have engendered by contending over this thing or when we get excited sometimes we do,—

to enter into this consideration at all. These things ought, from this moment, to be entirely forgotten; you are to act as jurors; you are to do your duty as jurors. I am satisfied that you will do exactly what is right in this matter.

Compactness of these districts is another matter I wish to call your attention to just a moment. The idea of calling this compactness. There is not one element of compactness in a district 130 miles long and 30 miles wide. I do not think that it is necessary to be argued. I will say yet that the districts as made will, I think, satisfy the people of the district.

Mr. Van Buskirk: I want to reiterate two things that the gentleman just on the floor has made. He said there is more business in that Jim River District than all of the others. I have had occasion to visit the courts of every county except Roberts, lying east of the west line of Beadle, Spink and Brown Counties. I am familiar with the business. I know whereof I speak. I know there is no business there in those districts that compares with the Empire District to the west of that section.

Another thing, gentlemen of this Convention, there is something very serious about making a district one hundred and twenty miles long; I have counted up the townships; it is 120 miles long; counting up the townships from the west line of Spink County to the Minnesota state line, it is a little longer than the other one; it is large enough to make a state over 120 miles long; talk about compactness, and look at it!

Mr. Hall: With regard to the matter of the amendment I think there are counties that should be consulted in regard to forming that kind of a district as well as other matters.

In Hand, Hyde, Hughes, Sully and Potter and Faulk Counties they are not satisfied; and I do not think a single one of the delegates are. They claim Hyde as being favorable; I wish to read portions of a letter I received from an attorney at Highmore in regard to this matter: "I favor a judicial district stretching east taking in Kingsbury county; it is not very flattering that they have since signed a paper cancelling their former signatures, which paper I will forward to you tomorrow. Our people here are united upon a district lying in a body, and cut off the necessity of attorneys running to Huron for court business. We favor the report as made by the majority of the Judiciary Committee and look to you to protect our interests in this direction."

It seems Beadle County or somewhere else has sent a man down in the adjoining counties for the purpose of getting signatures.

I will read a portion of another letter: "For Heavens sake don't let Huron own us any longer". Signed, W. A. Perkins. (Laughter).

The letter shows, Mr. President, that the people of this district are opposed to the arrangement as suggested.

Mr. Anderson: I presume it becomes necessary for me to straighten myself out a little; I might get somewhat mixed up. I came here under the impression that I was a representative from the Eleventh District. Almost immediately after coming here I was credited with being a Huron man; the next thing I was charged with being a Republican; I can stand that tolerably well; the next thing I was taken for a Presbyterian preacher; and now, Mr. Chairman, I am almost unable to tell after listening to the gentleman from Beadle, whether I represent Hand County or Beadle County.

The gentleman has stated that all the counties pretty much west of Beadle, were in favor of this substitute; that Hand County was in favor of it, and Hyde County was in favor of it, and Sully and possibly Potter; these gentlemen have spoken for themselves they have said to the Convention they are not satisfied and do not favor it. I think I can speak for the people of Hand County certainly as well as the gentleman from Beadle. I say unhesitatingly that the people do not want any connection with Beadle County; it would not suit the people of Hand County to be included in the District as comprised in this substitute; I shall vote for the report of the Committee on Judiciary; I shall vote against this substitute; we are satisfied with the district as reported by the Committee and expect to vote for it; I think the Committee has done a remarkably good job in putting up these districts, particularly the Fifth District. The District comprising the empire counties of Brown, Spink and Beadle, including the metropolitan cities of Aberdeen and Redfield and the Village of Huron, I think this is exceedingly proper. I hope this Convention will come to the aid of the rural sections of these districts and release us from the grasp of these cities.

Mr. Cooper: I have been waiting to hear from Hand County before touching up this question; I am glad I have at last heard from it. About a week or ten days ago the gentleman who just

addressed the Convention came to me with a proposed circuit which read as follows: Sully, Hughes, Hyde, Hand, Beadle and Kingsbury, and perhaps Miner Counties. He told me last night that he didn't know the people of Hand county stood on this question except from what he had heard from that county since he came here. I have heard from that county; I have it in black and white, signed by every attorney living in the county of Hand; the gentleman from Hand County included saying that they desire to be connected in that district consisting of Sully, Hughes, Hand, Hyde Beadle, and Kingsbury, or a similiar circuit; signed by every attorney, I say in the county of Hand, with one exception, and the reason that he gave for not signing it was this: That he was in favor of the Circuit proposed in the substitute,—other attorneys opposed the Circuit proposed by the majority of the Judiciary Committee and that he was in favor of sending this petition (which they afterwards adopted) through the representatives from that county, but the majority of the attorneys said that they desired that the petition should be addressed to the Constitutional Convention of the State of South Dakota; and for that reason he did not sign the petition. The petition speaks for itself and is substantially in the following language:

TO THE MEMBERS OF THE SIOUX FALLS CONVENTION:

We, the undersigned members of the Hand County Bar, respectfully represent that we learn with surprise, the boundaries of the Sixth Judicial Circuit and desire to enter our earnest protest against the same; that it will be injurious to the people of this county owing to the lack of railroad facilities with which to reach the different portions of the proposed circuit. And we further represent that all person or persons who may state or have stated that the Bar and people of Hand county are in favor of the proposed circuit do not represent the sentiments of the people.

Right in this connection I would like to make an explanation; Mr. Hole who came down here to represent his county, and he met a proposition from the delegates living north of the Second Standard of this kind; that this District should be composed of the Counties of Sully, Hughes, Hyde, Hand, Beadle, Kingsbury, Potter and Faulk; brought that proposition from one of the delegates from the County of Hand who sits in this Convention now; who said they had counted up the votes which would be in the Judicial Convention in that Circuit and that they wanted votes enough to defeat two counties, Beadle and Kingsbury. We told them they could have

them so far as we were concerned- we wanted to be connected only with counties in which decent members of the bar practiced back and forth. So far as the judgeship was concerned, if Hand County had a man they wanted to present for judge, all right, or if Hughes or Sully or any of them, that was all right. We say if we cannot get those counties, we want a smaller circuit; if it is not necessary to do it to take off a county, why let it be done. We do not know what the Convention will do but this is practically what we want; we want a circuit running along the Dakota Central railroad; if it is necessary to add to that circuit, the County of Potter and Faulk, or if it is necessary on the other hand to add the County of Buffalo or the County of Jerauld, very well. Now, I say this came from the Bar of Hand County, themselves; it didn't come from the Bar of Beadle County, although I was there in Miller on that day; I had nothing to do with this petition; made no suggestions at all except to say to them that the people living south of the Second Standard were satisfied with their Circuit; that it would be impossible and impolitic to take six counties in that circuit as the delegates had agreed; and they asked me when I went to Miller on that day, (I say I was there on private business; nothing connected with the Judicial Circuits) how it came that this Sixth Circuit had been formed in the manner and shape that it was; wanted to know why it was that we left a tract east of them side by side with them; why I would permit anything of that kind without raising my voice; I told them what the situation was and they said with one voice we will petition the Constitutional Convention at Sioux Falls that justice may be done the people of this county.

I say there is not a lawyer in this county, not a man in that county with possibly two exceptions that are in favor of the Sixth Circuit as proposed in the majority report of the Judiciary Committee. I say that it is not the evidence I have presented to this Convention as to the sentiment of the people of that county in relation to this matter. On yesterday, those in the minority, presented to the Chairman of the Judiciary Committee, the following petition, substantially:

Sioux Falls, July 23, 1889.

We, your petitioners respectfully represent that we believe there is much dissatisfaction with the judicial apportionment as proposed by your Committee as to the districts made up of the following counties, to-wit: Campbell, McPherson, Walworth, Edmunds, Sully, Hyde, Hughes, Hand, Beadle, Kingsbury, Faulk,

Potter, Brown, Miner and Day; and in order that full justice be done, and full consideration be given that section, we, the delegates within said territory, respectfully ask that the proposed judicial apportionment report as to those counties only, be reconsidered. Signed by Dickenson, Couchman, Hole, Stoddard and others.

Potter, Hughes, Hyde, Sully, Hand, Beadle and Kingsbury have sent petitions and other papers in connection with the matter and will be here tonight. C. G. Hartley, of Hand County, I have been told—Hartley now votes for the substitute. I have it over his own signature that the people of that county are opposed to it. I understand that he has received no new light from Hand County since yesterday. I have also some evidence from the County of Hyde. There is D. A. W. Perkins. I presume that when these gentlemen signed this petition they knew what counties composed the Sixth Judicial Circuit; I believe when they signed this petition they knew where were located the Counties of Sully, Hughes, Hyde, Hand, Beadle, and Kingsbury; I believe they knew these things and until there is some better evidence before this Convention, then this letter from one single member of the Bar,—I say I believe it would be injustice to the Hyde County Bar to say that they did not know what they were asking for when they petitioned this Convention as they did upon this piece of paper, substantially in these words:

"We, as members of the Bar of Hyde County, represent to the Constitutional Convention that the proposed judicial district to which we are attached is very unsatisfactory and will be very inconvenient and expensive for us. We therefore respectfully ask that our county be attached to Sully, Hughes, Hand, Beadle, Kingsbury and Miner counties for judicial purposes."

I think the signatures to this document include all but two attorneys who live in Hyde County,—Mr. Perkins and Mr. Price, who is at present in Bismarck; and so I say that the evidence from Hyde County is to the effect that they desire to be placed in a judicial circuit as provided by this substitute.

A good deal has been said in this Convention about center of Huron and Aberdeen, but I think if you look at the majority report you will find another center in Codington or Clark Counties. I think if you count the votes as has been argued before this Convention you will find that Codington, together with the counties

north, can outvote the counties south; or take the vote of Codington or Clark, with the vote of the other counties south and they can out-vote the counties north. So that it is a law that cuts both ways, if there is anything in it. But I say that I do not believe this Convention at this time is going to build up judicial circuits in a manner to favor any particular locality, in a manner to favor any particular man for the honorable position (I say the most honorable position a man ever is elected to in this world) that of judge of our courts. I say I do not believe this Convention at this time is going to cut up the Territory in such a manner as to entail endless expense and endless inconvenience to the people for the purpose of giving some man over in Edmunds county or some other county the fancied advantage. I do not believe that this Convention will do it.

Let us look at these counties formed into circuits by this substitute. We will start with Day county. Day county speaks as one voice, one man against the Third Judicial Circuit. They say they have to travel forty-five miles by stage in order to reach the center of the Judicial Circuit.

Another thing I would like to call the attention of the Convention to in this connection.

There must be something behind this,—there must be something rotten about this matter when all of these counties speak with one voice saying they do not want to go into a judicial circuit known as the "Codington Circuit". We hear from Marshall, and what does Marshall say? Marshall says, "We desire to go into a district with Brown County". Day says the same, McPherson the same, Campbell the same, Walworth says the same, Brown says the same; Edmunds says they want a judge over there and that they cannot vote down these other counties, six counties.

If this proposed circuit, as proposed by the substitute, has a perfect railroad connection with almost every other portion of the circuit, and we are told time and again while this Committee were at work, that they were opposed to the circuit including the counties of Beadle, Spink, Brown, and Marshall. Now, what do they want, and where do they want to go; what are their desires? I say they told us they were opposed to this circuit and I believe the gentlemen upon the Committee; the Chairman I have always found to be an honest man. I say I believe it. I find the men of Marshall County are opposed to this circuit; Brown county is op-

posed to the circuit; Spink county is also opposed, and Beadle county is opposed to this circuit. We find Hand county is opposed to the circuit they are in; we find that Hyde county is opposed to that circuit and McPherson county is also opposed and Campbell county is opposed to the Circuit, and also Walworth county. We find Kingsbury county also opposed to the circuit they are in; we find Brookings, Deuel, Hamlin, Clark, Codington, Grant, Roberts, are perfectly satisfied. We are willing to leave them as they are we do not want to force any one of these counties into another judicial circuit. We say they have no right; there is no justice in coming before this Convention and asking that Kingsbury county be attached to a circuit it will take them three days to reach the center of that circuit and come back home, when they can go to any portion of the Judicial Circuit composed of the counties of Kingsbury, Beadle, Hand, Hyde, Hughes, Potter, Faulk, in one day.

Now, in relation to the letter which was read by Mr. Sherwood, from Kingsbury County. It seems that it is uncontradicted that the Bar meeting, consisting of two members of the Bar only, one elected Chairman and the other was Secretary. That was the petition they presented to the Judiciary Committee as expressing the sentiment of the people of that county. I believe, Mr. President, and gentlemen of the Convention, that the majority of the members of the Judiciary Committee were with us,—were in favor of doing what is right and justice so far as the people are concerned living in the counties lying north of the Second Standard. This report is not signed by all. Some who signed it said they signed with a mental reservation that if they were not sure that these counties lying north of the Second Standard were not fairly dealt with they would see that they were fairly dealt with on the floor of this Convention.

Now in relation to the statement that during the last five or six years these centers have monopolized the time of the court; that the Court laid around Beadle and around Brown county and that these outlying counties did not get their fair proportion of the services of the Judge. I say that I know that is a mistake. I know that Codington has had more days' court during the last three years,—I know that Codington county's calendar is in better condition than is Beadle's. I know that the county of Hand is in better condition than Beadle county; I know Hyde is in the same

condition; I know Spink county is in the same condition. But there are gentlemen representing these counties who are here and who can speak for themselves. I believe it is the desire of this Convention to form these judicial circuits so that they will satisfy as many of the people residing within their limits as possible. The majority report provides a Fifth Judicial Circuit that is objected to by every county in it. The majority report submits to this Convention the Sixth Judicial Circuit, which is opposed by at least five or more of the counties that it contains. The third by at least two. Now, I reiterate that Sully, Hughes, Hyde, Hand, Beadle and Kingsbury, lying on this line of road are in favor of a circuit such as proposed in this substitute. If I am in error I would like to have some gentleman representing these counties call attention of this Convention to it in some way. The gentleman who spoke for Hand county said the people were opposed. Last night he said he did not know what the wishes of the people were. The other gentleman, over his own signature yesterday in his own handwriting, said the people of Hand county were opposed to the counties proposed by the substitute.

Mr. Couchman called to the chair by the President.

Mr. Hartley: Gentlemen of the Convention; I would ask the same question; who is it that represents Hand county? Is it the two men who were elected or is it the gentlemen who were elected from the county of Beadle? Before the people of Hand county asked me to run for the position which I now occupy, it was generally conceded to be the understanding that anything of the nature of a shoestring arrangement of judicial districts should be voted down. I came down here with that understanding. Two petitions were sent down. They were not sent to either of the representatives. Now, gentlemen of the Convention, you can see the forecast of this thing. These petitions were gotten up under the dictation of the people of Huron, so I am credibly informed, and were not forwarded to the representatives of Hand county. If they were not honest enough to represent their own people in the Convention, why did they elect them? The men that got up that petition and circulated it were asked by the business men of Miller to send it to me.

A Voice: It is evident that Hartley is a Democrat. (Laughter).

Mr. Hartley: It was not done. We were ignored by the man that got up that petition. I will say right here, without fear of

contradiction, you go to Hand county and talk with her people and you will find that petition does not represent the people of that county, and if I had time to explain these conditions of affairs, I would bound by my word as an attorney, there is a different condition on the road here now. These petitions were not gotten up by the people of Hand county. I have it upon very good authority. While this is in the handwriting of different persons it was not signed by the attorneys of our Bar; the petition that was circulated in our county first was included in the county of Hyde, after this petition was circulated and all the signatures upon it but two,—a copy, not the original, was sent afterwards.

In the evening the members of the bar, or some of the members, held a consultation. They were not satisfied with the man who brought that petition down here,—they decided that they were sorry that they had signed it. There are two men here now who signed that petition,—two men who are acquainted with the county and they gave myself and my colleague that impression. That after they looked over the matter they were not satisfied and that they decided to present us with a different statement. I have lived there seven years; Mr Anderson has the same, and we know the people of that county. That petition does not represent the sentiment of Hand county. After we had received that petition and before I had heard the balance of the report, and before I received the letters last night, I gave it weight. I felt inclined to obey the request of the bar, while I did not consider either Mr. Anderson or myself had been properly treated. I said to one of them that this district would be satisfactory,—that is true, I did say that,—but what else did I say? Did I not say, I feared they would come before this Convention with a different arrangement; that I insisted that you should get together and settle the matter and not have any conflict on the floor, that we ought to agree among ourselves and stop our controversy, for just as long as Beadle County wants Hyde County in that circuit, why, there is going to be trouble. They must have a shoestring district; they must have their own town accommodated the same as it has been.

It went out over our district that Huron must not only have the center, but must be mistress of the situation as in the past.

In regard to the new arrangement of this district, the arrangement that is proposed by this substitute, if the counties can agree upon it there will be no trouble. Can we agree? Spink county

it does not satisfy; it does not satisfy Faulk; it does not satisfy Sully, Potter, Hughes. How many counties is that? Right on the other hand east of us, they are dissatisfied. I will say in regard to this, that as far as I am personally concerned, and supposing Codington county is satisfied, I am satisfied. But it would not be satisfactory to our people. While I am sorry that this condition of affairs should exist, I think the people of Hand county are capable of saying what they want without being dictated to by outside parties. I will say further that I have sent word at different times to the members of the County Bar, what would be the arrangement. I know the arrangement would be substantially as the Committee reported. There was a good many Hand county folks here last week. It was talked over. If there was any dissatisfaction they were requested to speak out. I heard no word. The man who brought this petition down here came down under the instruction of a number of men that signed it. I am going to vote for the original report. I am going to come down right now and vote for the original report. We may as well say Hand county is Hand county as well as say it is Beadle county. It is well understood by the members of the Bar of the county that once a man is elected in that District, to the bench, he serves the people. No man in that entire country up there will get on the bench unless he promises to serve the people,—not to serve one town. He has got to hold court in the various counties and do his duty; that is all the people are arguing for up there. They do not care who he is,—whether Democrat or Republican, they say. A majority of the people have said to me repeatedly that they do not want to go to Huron any more. I have gone to Huron and have taken two days or over on a very unimportant matter. If you think I am going to take the expenses of making such a trip out of my pocket, you are laboring under a delusion. But, if we take it out of our clients, they begin to want a court at home. While this arrangement may not suit some of the counties, I think it is the best we can do. Personally, I think they have not given us a fair show. There are other counties who have fault to find,—that they have not received a fair show in the matter of services of the judge of the district. On the other hand we have paid that Judge \$1500 a year to go around the circuit to hold chambers, so as to save clients unnecessary expense. That did not afford the relief sought; that is why I complain. I am well acquainted with a great many Huron people;

I never had any trouble with those people or with Huron attorneys. My associations with the people of Huron have always been pleasant, but I am tired of being compelled to go there every time I want an order signed. Again what are you going to do? Then a proposed county turns around in their position; you are as dissatisfied with the new county as with the old arrangement. Last night I was invited to attend a meeting of those delegates; I understood all the delegates from the dissatisfied counties were invited in there. They were not all invited. But since this happens, what are you to do but accept what the Committee has given us?

Mr. Cooper: The gentleman has asked is it necessary to come in from the outside to represent Hand county? I leave that to the Convention. I would like to ask this question: If any gentleman who signed that petition of the Hand county Bar has sent word by letter or come in person, or sent word by anyone that he did not want to be in the circuit with Kingsbury and Beadle counties? I will ask if any lawyer in Hand county, anywhere, or the gentleman who has just left the floor ever said he did not want to be in the district with Kingsbury and Beadle counties. We say that no attorney who has signed that petition has declared that he did not want to be in a district with Kingsbury and Beadle counties, but some said they would like a circuit out west heavier than those that had been east and made that objection. It was stated that Faulk and Potter counties had objected. I say I am not wrong on this matter,—I say I know what I am talking about and no gentleman in this Convention will dispute me.

It seems that the gentlemen have a grievance, for instance, Marshall and Day counties. I understand there are gentlemen here who are representing those counties; I understood that there are gentlemen here who are representing Brown, McPherson, Campbell and Walworth counties. I have understood these gentlemen to say if they wanted an order or injunction that they objected very much if they lived in Campbell county, to travel by rail to Aberdeen and from there eighty miles south to the city of Huron, and from there one hundred and twenty miles west to the city of Pierre to get their order. It has been stated that the Legislature would, sometime in the future, grant circuit jurisdiction or vest County Courts with Circuit jurisdiction.

That Mr. President, and gentlemen of the Convention, will, in my mind, depend to a great extent upon the circumstances as to

what situation these county courts will be placed in and what kind of men are elected to fill those positions. Whether or not they are capable men, whether or not they are men who are capable of performing the duties of the office. If they are, I presume that certain jurisdiction will be vested in these courts; otherwise I presume likely it will not. And if it is not, what will be the result? You will have trouble through these Judicial Circuits in the future as well as in the past. A man will have to travel over how many different lines of road and through how many circuits? I say this is a question that should be thought of by this Convention before they pass upon the question. In the proposed circuit of the substitute, what do we find? We find that these counties are nearly all contiguous,—nearly all connected by direct lines of railroad; we find that the counties lying west of Aberdeen have complete railroad connections with the county of Brown, Marshall, and Day; we find the counties lying west of the county of Kingsbury have connections throughout the Circuit with the counties lying north, the counties of Potter and Faulk, have direct communication with the balance of the Circuit. I say again, the gentlemen might not have heard what I said before I repeat it now,—I want you to say whether or not members of the Hand county Bar are opposed to the proposed plan, or prefer Hughes, Sully Hyde, Beadle, and Kingsbury counties. I ask if any gentlemen of Hand County were ever opposed to the Judicial Circuit composed of Sully, Hughes, Hyde, Beadle, Kingsbury and a couple of counties lying north or south.

Mr. Humphrey: If the gentlemen of the Convention will pardon me for a moment, I will attempt to clear away some of this rubbish. In the first place I congratulate myself in that what I may say is addressed to a body of gentlemen and not to a petit jury, who are selected under them, and in consequence of this that this argument will have more influence with you than with a jury. Further than this, it will not be necessary for me to call your attention to the fact that positive assertion is no more argument than that a check is just a slip of paper. It has been with considerable amusement that I listened to and witnessed the assurance that the gentlemen from Beadle county,—the extraordinary assurance that they have shown in pleading for others,—and while they include Beadle county among the list of dissatisfied counties, they have not called your attention to a single ground for

that dissatisfaction,—not a single ground. Their solicitude is remarkable in that it refers only to others. While I do not descend to insinuations as to the motives of others, that alone would indicate a motive of their own. We can but infer that the gentlemen from Beadle county must have some cause for alarm to be connected with Brown county, and if it is true, why should they not immediately contribute to smaller counties the same fear of being connected with them. The gentleman who first occupied the floor from Beadle county said that there can be nothing of the nature of compactness in a district 130 miles long. Well, the district, under the apportionment made by the Committee of which Beadle county is a part, is 120 miles long. These are small inconsistencies, to which I call your attention. Another amusing thing, to my mind, presented by the gentleman who first occupied the floor from Beadle, is this: He, through some stretch of imagination, is able to discern some difference between the duties of the delegates who are on Committees and those who are not on Committees. I came here representing a locality; I came here representing all and each of the localities; I know no difference in the discharge of my duty, either as a Committeeman or as a member of this Convention. The gentleman who last had the floor from Beadle county, assures us that Spink county would have reason, as he terms it, to "kick" on the proposed substitute, he admits that others have reason to "kick" on the plan proposed, but has shown no such reason why Beadle has any reason to "kick" under the plan as proposed by the Committee. It is told you by the Chairman that the Committee devoted most careful consideration and great industry in endeavoring to present to this Convention a report that would meet the approval of the Convention. He told you they had considered every proposition that had been brought before it, and that the Committee met on the very evening of the very day they were appointed and they gave notice that their doors would be open to members of this Convention and notice was given where they met from time to time and there was no time but what those doors have been open for all who wished to address the Committee during its session for a period of about three weeks. I was amazed by the statements made here and am confident they must have been unguarded statements. It is certainly an erroneous statement that they had not had an opportunity to make their arguments before the Committee. If anyone attempts to impugn either the motives of this

Committee of this Convention in saying or implying in any sense, a dishonorable motive on the part of this Committee it is an insult, not only to the Committee, but one to the Convention. As our Chairman informed you, we considered first, carefully the powers of this Convention; also the expediency, and next the necessity of enlarging these districts. There was some diversity of opinion; a large majority were of the opinion, and that opinion was founded upon the intelligence of the Bar,—for other members of the Bar were before that Committee, not only from the Convention, but without. The question of expediency bore also upon the question of the powers for this reason, it was simply a question of doubt, a large majority feeling the power was clear and distinct and at most, but open to a question of doubt resisted the expediency of increasing the districts,—that it would interfere with the President's admitting us. I wish to indicate the care that was exercised. These questions were weighed as carefully as they might be. What would be the effect of increasing the facilities of the court? It was in view of the added facilities under the Constitution that it was finally determined by a large majority that there was no great need of increasing the facilities at the present time. During all this time that these gentlemen were insinuating that there were political motives controlling the Committee I will simply say this, that there is no doubt that there are many ambitious towns in this State and many people aspiring, perhaps among those facing yourself, Mr. President. So far as I know this was not the motive that influenced any man upon that Committee. The reason that it was held at the lowest possible estimate of necessity, was this, that at present we had to make our apportionment on a vote. No satisfactory apportionment can be made except by publication under a census. The census will be taken in 1890. We will then have a basis upon which a re-apportionment can be made that will be satisfactory to all. Therefore, it was not considered expedient or necessary by the Committee that they should attempt at the present time to provide for the future of Dakota,—simply for the near future during the period previous to the taking of this census. As to the plan upon which the form of the districts was determined, that was the question upon which there seems to have been the most charges made concerning corruption on the part of the Committee. It occurs to me that you may not all know what recently appeared in the Aberdeen Republican, as erting that that Com-

mittee was packed. Well, I will say that when I first read the names through of the members-elect of the Convention, I found that there was about one-third of the Convention, Democrat. I know six Democrats of the Convention on that Committee. I will add, though it may not be pertinent to the argument, that while it is plain that these north counties were unrepresented upon that question, events show why. The most important duty before this Convention was a division of the archives, assets and liabilities of the two states. That was the paramount duty. Who was to do it? Simply a commission of seven, over whom we had no control. We could not dictate to them in the slightest degree. Who constitute that Committee? Was the north portion of the State ignored? They had two out of the seven members of the Commission. They wanted three. It is said that the gentleman from Brown county claims that they did not wish it, but as I understand it there was two candidates from Brown county for the position. One got it,—the other got left.

Now, in regards the forming of these districts all that can be said is, that the forming of the districts is fixed by the express terms of the Constitution of the Convention of 1885. That Constitution says that these districts shall be compact in form. The very men who drafted that Constitution approve of the districts as reported by the Committee. They are compact in form in the nature of being square or as near square as may be. Mr. President, while we have been guarded step by step, we have progressed in our duties to avoid stepping over the bounds in the least particular under the provisions of the Omnibus Bill, feeling that we had no right or power to amend the Constitution in any way or shape except as provided by the provisions of that Bill. When we have exercised that care in the discharge of all our duties so far, shall we begin now to violate its spirit? Gentlemen have stated here that there was apparently quite a large minority in that Committee opposed to the report. Has it occurred to you that if that was true that it was strange that they have no minority report? How is this matter brought before the Convention? In any way implying disagreement in the Committee rooms? Mr. President, this opposition is instigated by those who have shown themselves so solicitous with regard to the convenience of the others and so ready to assert what the other's wishes are. The gentleman from Beadle should have presented a minority report and he would

have stated his reasons. The facts of the case are that it is impossible to please all, as glad as we would be to do so. Your Committee used their every endeavor to adopt a plan that would please the greatest number possible. Every possible plan that could be devised has been tried and tested and we finally determined upon a plan of a vote of apportionment that would please all but a few. It is a matter, simply an impossibility to please everybody. Where we find a single county, as glad as we would be to accomodate them, —carrying out the spirit of this Constitution, we would be glad to do so, but in the discharge of duty we should not hesitate even upon this point to do our duty and make an apportionment that would accomodate the greatest number. They have asserted that the substitute accomodates more than the majority report. It is claimed a portion of the counties whose voice they claim to speak, but secured it by sending out to get it. It is presumed that the delegates on the floor of this Convention, who represent those counties know the needs of their people and will not prove recreant to the trust imposed upon them. I will say in this connection also, in conversation with a gentleman representing Campbell, who will vote for the substitute in representing the voice of his constituency, that he told me that they went to Aberdeen in preference to any other place to attend court. When I asked him why they wanted to go there or anywhere else under the provisions of the Constitution the judges were to go to the people of the counties and not the people to go to the judges as heretofore. He replied that since they learned that fact they had no anxiety to go to Aberdeen to attend court. Another reason is this, Mr. President; these little counties and these large counties especially have almost a year's calendar on hand and in the new counties of the west it will be as in the past that they will get court at the convenience of the larger counties. It does impress me as somewhat strange that these entire counties should be afraid to stand alone,—why they should wish to have tied to them counties by the half dozen or more which I think is one of the incomprehensible things.

The people west would say almost in one voice, we favor the adoption of there port presented by the Committee; they are able to stand alone and they want judges to look after their business and as yet their business is not so extensive but what a judge coming in there could keep up with any counties in their district, except perhaps Hand and Hughes with an accumulated docket. I was

surprised by the argument by the gentleman from Beadle, on this floor. I should not refer to it, though the argument was presented to the Committee, and that is why I was surprised that it was presented here after it met with the reception it did in the Committee room, I am surprised that it was presented on this floor and had it not been so presented I should not have referred to it. It was this: That it was wrong and un-desirable to both parties who had been together before now in business relations to be separated and that the counties who had been associated with Beadle wished still to remain with Beadle because all was harmonious between them and everything working so nicely. What stuff! I want to say, gentlemen of this Convention, that I have no personal motives or any personal interests to serve in the formation of these districts. It is my purpose, as under my oath, it is my duty, to use my best influence in securing these districts as I believe best meet the requirements of the Constitution and best serves the interests of the people. I will say that so far as I know we have no candidate for judge in the county from which I come I am certainly not eligible, not being an attorney. I will say further, no matter from what county the judge is elected that no one county, Mr. President, will have more court or more chambers than any other county.

Mr. Wood: As a member of the Committee, I contended all along that eight circuits were not enough. The difficulties that we are now experiencing is a difficulty that I before contemplated, and if the state were to be divided into nine circuits I am satisfied it would not be too many. I am also satisfied that such a division should have been made as to completely remove this entire difficulty. There is some inequity in this division contended for, contained in the report of the majority Committee. There is some inequities contained in the substitute. It never can be arranged in this way and get a satisfactory division of the circuits of this State. In my judgment, having had twelve years experience at the Bar in this Territory, in my judgment, these circuits are not sufficient. While they may answer for a time, I think the Convention is giving the State an insufficient number of judicial circuits. I therefore move that this report and the proposed substitute be re-submitted to the Judiciary Committee with instructions that they report on the morrow, recommending the creation of nine circuits.

Mr. Van Tassel: I second the motion.

Mr. Fellows: I rise to second the motion of the gentleman from Pennington County and in doing so to say this,—that in my opinion nine districts will soon be insufficient to accommodate the business that they will have to perform in the administration of the justice as it ought to be administered in the courts of this State. That it will require at least nine circuits and further it would afford us a happy solution of the difficulty we have gotten into here today and at the same time satisfy all localities. I most heartily second the motion of the gentleman from Pennington.

Mr. Sterling: I would say, as stated in the report, that the Committee have also had this subject under very careful consideration. It was with reluctance that some of the members of the Committee yielded to any increase at all. It was assented to, I believe, that one additional circuit in the Black Hills country would be sufficient to transact their business there. It was said by a good many members of the Committee at first that five circuits were satisfactory to themselves as shown, but that the increase would be sufficient if the State was properly apportioned in the districts in which to do business. I think that this motion to add another district for the territory east of the river ought not to be raised.

Mr. Humphreys: The Committee, as the Chairman has stated, did most carefully consider that matter. The gentleman making the motion and the gentleman seconding it were the only two that I now remember who finally favored the idea of having nine circuits. It was the judgment of the Committee that that would not be the sense of the Convention; that it would be neither expedient nor necessary to extend the number beyond eight. I doubt if it would be possible to arrive at any other condition than now exists, if we did have nine circuits. I move that the motion of the gentleman from the Hills be laid upon the table.

Which motion was seconded.

The President: You have heard the motion. Mr. Woods, of Pennington, moved that the majority and minority reports be referred back to the Committee for revision; Mr. Humphreys moves that the motion be laid upon the table. Are you ready for the question.

The motion to lay upon the table prevailed.

Mr. Sterling: I have been a little bit surprised, gentlemen, at the assumption that has been manifested by some members of

the Convention in favor of this amendment or substitute, and who have spoken upon that side. It seems to be a remarkable solicitude for the welfare of the other counties that is exhibited by these gentlemen and you will notice, gentlemen, that the most of the opposition to the majority report and the second in favor of this amendment comes from a certain section, from a certain county. It emanated from that same county in the Committee; it emanates from that same county here in the Convention. These gentlemen deny and protest it is not for political purposes that they object to the majority report, and say that they do not know that they have any candidate for judge. That there is nothing of that kind. I will ask you, gentlemen, if at the coming election there is no other political question to be determined than the judgeship, or whether that may be any motive to base this particular form or district upon as reported by the majority of this Committee. But the gentlemen come upon the floor and make a strong point as they seem to make,—as they would have this Convention believe to be that the counties to the west of the county of Beadle as against Beadle and Kingsbury counties will overcome Beadle and Kingsbury counties in Convention, in the nomination of a judge what does that amount to? They are not so particular as to that but they have other interests at stake. What does it mean? Can we not see it? To have these counties west of them entirely tributary to them, their political preferment to be included in that same district which they have mapped out. It may be capital for them to deny their reasons and say there are no reasons for it. What do we make these judicial districts for, gentlemen of the Convention? Is this Committee to be in the despicable business of making out circuits to gratify the aspirations for judgeships? I say that is one of the questions or rather influences that this Committee had to contend with, guard against, while in session. It is one of the very things we will, in Convention, have to guard against. The opposition, most of it, to this report, comes from a county that for the transaction of business is one of the very best circuits of South Dakota today, and they dare not deny it. Four counties in the circuit and every town in it of free access to any judge from whatever part of that circuit he may come. They cannot say that each of these counties shall not have its reasonable share of his time and attention,—let him come from where he will. Then gentlemen, it must be from some other motive than the discharge of their

business that these gentlemen from Beadle county oppose this report and I think you are by this time aware of it. They pretend to speak the sentiments of these counties around them. I ask you if they speak the sentiments of Kingsbury or that of the counties west of them. From letters from a district attorney of Hand county, in which he calls attention to the very petition presented by the gentleman from Beadle, in which he says that they made a mistake and desires that their names be cancelled therefrom. They pretend to speak for Hand county in fact, made what would seem to be the strongest argument. The gentlemen from Hand, delegates on this floor, whose opinion you are bound to respect, say they are opposed to the minority report. What else is there in this? Will the gentlemen deny that their petition, signed by the attorneys of the Bar of Hand county, has been followed here by the men who signed it, and have told the members of the Committee and members of this Convention that they are satisfied with the district as embodied in the report of the Judiciary Committee?

Mr. Sherwood: I deny that any gentleman has done anything of the kind and you may publish it. I heard it told, and told by other gentlemen who have been told the same thing. I simply say that I am in duty bound to correct the impression that these gentlemen from Beadle try to leave in reference to Hand county. I say I know the delegates here from Hand county reflect the sentiment of the people there. What else is there in this report that is not satisfactory? I believe, gentlemen, that we have disposed now of the question in reference to Beadle county and the counties west of Beadle.

There is some opposition from the north,—it is opposition that is entitled to command respect. The gentlemen making that opposition do so without reference to capital purposes or judgeship purposes or any other unworthy motive. The Committee have tried their best to satisfy them but we found that with the other interests of the other districts to make, we could not do any better than we did do. Then is it so very inconvenient, so distressingly inconvenient for all those gentlemen in the north? Look at the map and see. On the east is Day county. The gentlemen from Day county protest. What kind of an arrangement will we have yonder when admitted as a State? We shall undoubtedly have for these counties two terms of court each year in each of them. What

are the communications that Day county would have with the other counties around her? She will have Grant county on the east with two terms of court yearly at which her attorneys can transact business. What connection below? Clark county with two terms each year at which her attorneys can transact business, with which they have direct communication. He would go from Webster to Bristol and from Bristol to Elrod, which is about seventy miles from Clark. Is that very inconvenient? Those trains connect. What else is there about it? Why two terms of court in Day county itself, with good railroad connection, and if they have any great stress they don't have to walk, but can take the train eighty miles over to Watertown and transact their business. So I say as against the arrangement that this Committee has made, with all the work they have done, you will not with those advantages that appear so plainly upon the map, better the condition of the county of Day. I do not think you will set aside this report of this Committee. What about Kingsbury? There is objections from there. I say exactly the same argument obtains for the county of Kingsbury. It has Brookings on the east of it with two terms of court a year. It has its own two terms of court a year at which the attorneys may attend and transact their business. If you wish to go to Clark, the trains are reasonably accessible to the county of Kingsbury. In addition to this, gentlemen, it will probably be provided, if the judges do not manifest the disposition themselves to do it, by the Legislature that the inequities perhaps referred to by Mr. Van Buskirk, of Codington county, will force the matter upon their attention. The judges will be required to hold a day in chambers each month in each county in his circuit, and that with the jurisdiction which may be conferred as the gentleman from Codington has said, upon the county courts to grant motions and hear motions and chambers will still further relieve this dissatisfaction. Let us look at the other side of the Fifth District,--McPherson, Campbell, Walworth and Edmunds.

Gentlemen, I am surprised to hear the cry of distress go up and then look at the map. Why, McPherson has no communication with Brown county by railroad except down through Edmunds county. Campbell turns to Aberdeen as a Mecca and she has to perform her pilgrimage by way of Eureka. Walworth goes through Edmunds to Brown county, and yet here is a gentleman from

Edmunds having the most direct communication with Brown county through which county these other counties have to go, who tells us that they want a district by themselves away from Brown county. It is more than likely they will have railroad communication with other parts of the district. There has already been started a road that extends in that direction and which will undoubtedly be completed in a short time, and each county in that district will be connected with the other by good railroad communications. So, gentlemen, I believe that these objections, when we come to consider what has been done for the whole state and the way the Committee have had to plan and figure in order to satisfy the different places and apportion them according to the population and according to the communications so far as possible, that this Committee report must commend itself to you for your adoption.

(Repeated call of "Question".)

Mr. Sterling: I move the previous question.

Motion seconded.

Mr. Stoddard: I raise the point of order, I had the floor.

Mr. Sterling: The motion is withdrawn. I beg pardon.

Mr. Stoddard: Gentlemen are calling for the question. I am not disposed to take much of your time if I could; I am not a lawyer or a professional speaker; I have been talked to by them. What few remarks I do make I hope I will not get quite so noisy as my friend from Beadle and certainly not so excited as my friend from Spink. I KNOW I cannot talk so smooth and oily as my friend from Faulk.

There are a few points that I wish to talk about. One is this — about Beadle county. The most of the talk seems to be of this nature that indicates that most of them are partial to Beadle county and Huron in particular. Now if that is a fact, we cannot help it. Up north there are some six counties in a block with Kingsbury down here and Hand that makes eight altogether, besides Beadle. We certainly are not responsible for the lawyers of the city of Huron. Our counties feel that there is injustice done to all these counties and it appears to me that greater injustice will be done by adopting the majority report.

We, from the north, came down here with a clear understanding not from any combination as has been insinuated,—nothing of that kind—but by talking and instructions and from the feeling all through our counties and Brown county and from all.

We have no petition, but no one denies but what we want it as the substitute calls for. Walworth and McPherson certainly do and Day. The one exception is Edmunds county. When we came down here we understood that Edmunds wanted to go with the district as it was at present under the Territorial division. But since then my friend from Faulkton has got two or three letters and there seems to be little doubt but that the lawyers of Ipswich want to be joined to the Brown county district.

I present it to this Convention; is there any sense in saying that Edmunds, whose county-seat is only twenty-six miles from Aberdeen should oppose the motion. I leave it there, if there is any sense in that.

I want to ask the gentlemen from Codington and Clark, what serious objection they have got? This substitute leaves them in good form; I ask the same question of Sully and Potter—they are small counties but have just as good right to be represented as any. What serious objections have they to re-districting this portion of the State and let some nine counties dissatisfied under the substitute that otherwise, if the Judiciary Committee report goes through, are opposed emphatically and positively to it. Excuse me gentlemen, I don't know but I am getting noisy.

It brings up another point. Nine counties positively and emphatically opposed to the majority report, so called. There are some other counties in favor of it and opposed to the substitute. But no good, tenable objection has been stated on this floor. The gentlemen from Codington and from Faulk and from Clark give no substantial reasons why they are not satisfied with the substitute. They have told you about shoe-string districts, they have represented them stretching from the Minnesota state line to the river and how convenient it was to go from one county to another. But they have not stated any reason why the wishes of these counties up north should not be respected; I submit that as a fact.

Just one other thing. The gentlemen from Spink seem to harp so much upon the fact that the Committee has labored so long and continuously while getting up this report. I am not a member of that Committee, but I am somewhat familiar with their work. In the first place they took about a week to consider the question of power, the question of expediency. Two or three of the gentlemen said that they had our case in hand and they would do us justice.

All right, we rest there easy. In the meantime a joke began to be passed around. They came, first one, then another, with the remark, "How would you like Beadle, Spink, Brown and Marshall in your district?" It was passed around to everyone as a joke and so taken. Nothing was thought about that; thought it was not possible to perpetrate such an eternal joke as that upon us. But it seems that some of the Committee went down to the Chairman, the gentleman from Spink, and spoke of the joke, lo and behold the gentleman took it seriously. There was just a few hours labor on that entire joke,—just a few hours. The most important part of the whole labor, I understand, was undertaken in those very few hours and the beginning of that work was a joke.

Now, gentlemen, I do not know whether we can count on that or not, but certainly we have a most emphatic and positive objection to that majority report. We thus appeal to you—appeal to you for this substitute. It hurts no one at all and everyone will have facilities for getting back and forth throughout the district. We thus appeal direct to you, gentlemen of this Convention, and I appeal to some of the members of the Judiciary Committee also. There is none of those counties that want to go in that unless it is Spink and with possibly the exception of Spink none of these want o go nto that district. I hope you will do us justice.

Mr. Clough: I move the previous question.

Motion was duly seconded,

Call of "Question" from all parts of the House.

Mr. Willis: The majority can say whether they want the previous question.

Mr. Lee: I believe we are convinced that we do not want to stay any longer. If we stay much longer the "Old Man" will want to make aspech and then he will stay here all night.

Mr. President: Shall the question be put?

This motion prevailed.

Mr. President: Mr. Sterling of the Judiciary Committee brought in a report Mr. Spooner of Kingsbury brought in a substitute. Now the question is upon the substitute.

Mr. Jolley: This is an amendment.

The President: The vote then is upon the amendment.

The Chair being in doubt roll call was resorted to.

Mr. Edgerton, of Davison: At this time I desire to state to the Convention my reasons for giving my vote in the way I

voted upon this question. It is known, perhaps to this Convention, the position I took in reference to the Omnibus Bill, when this Convention assembled. I have not changed my attitude upon that question. I believed then that this Convention had no power except those powers expressed by the Omnibus Bill. It was the charter of the powers of this Convention. That I may not be mistaken I will read the section under which we have the right to re-apportion the State. In defining the powers of this Convention the Omnibus Bill provides the scope and powers of this Convention: "That they shall also submit the articles and propositions separately submitted on that election, including the question of locating the temporary seat of government with such changes only as relate to the main boundary of the proposed state and the re-apportionemnt of the Judicial and Legislative districts, and such amendments as may be necessary in order to comply with the provisions of this Act."

Now, we admit this, if it is necessary to increase the number of circuits in re-apportioning the State of South Dakota, then this Convention has the power to increase the number of circuits. But if it is not necessary to increase the number of circuits then it does not necessarily fall within the powers of this Convention as granted to us by the Omnibus Bill. There are three inhibitions in the Constitution in reference to the Legislative and Judicial Department so far as the re-apportionment is concerned. In the Legislative Department of Article 3 of the Constitution in Section 2, reads as follows: "The number of members of the House of Representatives shall not be less than seventy-five (75) nor more than one hundred and thirty-five (135). The number of members of the Senate shall not be less than thirty-five (35), nor more that forty-five (45)."

There is not a member of this Convention that will claim that this Convention has a right to go beyond the limits provided in section 2. In reference to the Supreme Court the limitation in that is this: Section 6 of Article V, reads, "The number of said judges" that is the Supreme Judges—"The number of said judges and districts may, after five years from the admission of this state under this Constitution, be increased by law to not exceeding five." There is not a member of this Convention that will claim that this Convention has the power to make four or five Supreme Judges. This is a limitation upon our powers; consequently it will not be claimed the Supreme Court shall consist of more than three judges

for the first five years. Under the head of Circuit Judges, the limitation, in my opinion, is just as absolute: "The Legislature may, whenever two-thirds of the members of each house shall concur therein, increase the number of judicial circuits and judges thereof, and divide the state into judicial circuits accordingly, taking care that they may be formed of compact territory and be bounded by county lines, but such increase of number or change in the boundaries of districts shall not work the removal of any judge from his office during the term for which he shall have been elected or appointed." The proposition is this: That this Convention has no power in re-apportioning this State for legislative purposes to increase the number of circuits beyond the limit provided by this Constitution, nor the number of the House beyond that, nor has this Convention the power to increase the number of judges upon the Supreme Bench for the next five years; nor, in my opinion, have we any power to increase the number of circuits except by two-thirds vote of the Legislature. That Legislature assembles within ninety days; that Legislature by a two-thirds vote, not by a bare majority, may increase the number of circuits to seven or eight or nine. Consequently I am not in favor of the motion; that this Convention has no power to go beyond the number fixed by the Convention of 1885, believing as I do that this is one of the limitations placed upon this body. I shall be obliged to vote against this motion. This question rests with me, not upon a question of politics, but upon a question of law; upon that I base my reasons for my vote upon this question. Mr. Chairman, I vote no.

Mr. Humphrey: If it would be allowed, I would ask a question. Would, in your judgment, our increasing the number in any manner endanger our admission under the Presidential Proclamation?

Mr. Edgerton, of Davison: I do not believe that I would say, for this reason: It is a question, I admit, upon which lawyers differ; I admit the fact that a large majority of the lawyers of this Convention differ with me upon this question; it being a question upon which lawyers may honestly differ and come to different conclusions. I do not believe the President of the United States will consider it of sufficient importance to bar admission under the proclamation.

The amendment was lost by a vote of 22 ayes and 39 nays.

Mr. Hayes: I move this as an amendment to Section 5, by striking out the words "from districts". Also to amend Section 6 by striking out the words "and districts." Section 10 by striking out the words "and at the time of his election be a resident of the district from which he is elected."

Mr. Hole: I rise to a point of order; the previous question has been called and that has not been settled.

The Chairman: I think you are correct; the previous question having been moved.

The Chairman: The question now, is upon the original motion as offered by the Chairman of the Judiciary Committee. Mr. Sterling, how will you vote?

A Voice: By ayes and nays.

Mr. Cooper: I desire to change my vote from aye to no.

Mr. Heninger: I desire to change my vote from aye to no.

The report was adopted by a vote of 42 ayes and 19 nays.

Mr. Wescott: I move the report be made the special order for tomorrow.

Mr. Peck: Is not it adopted?

Mr. Hole: I move to reconsider this question.

Mr. Humphrey: I move the motion to reconsider be tabled.

Which motion received a second, and prevailed upon reaching a vote.

Mr. Willis: I move we do now adjourn.

The motion to adjourn prevailed and the Convention was adjourned until tomorrow, at two o'clock.

TWENTY-SECOND DAY.

Sioux Falls, Dakota, July 25, 1889.

Two o'clock P. M.

Pursuant to adjournment, Convention convened with President Edgerton in the Chair.

Rev. Mr. Clough: Almighty God, our Heavenly Father, we thank Thee for Thy merciful providences toward us, and the comforts we have enjoyed. And now as we come to the knotty problems in our work, we pray that Thou wilt give us wisdom, and strength and discretion, and understanding that all these things may be done as they ought to be done; that we may further righteousness and good government in this new State. Guard not only the interests of the State, but those who are near and dear to us at home; for Christ's sake, we ask these blessings.

AMEN.

Mr. Young: I move that the further reading of the report as far as it relates to the reports be dispensed with.

Motion prevailed.

The President: Communications and Presentations of petitions.

Unfinished business of the previous day.

Reports from standing Committees.

Mr. Humphreys Committee on Printing make the following report:

July 25, 1889

MR. PRESIDENT:—

Your Committee on Printing have had the desirability of put-

ting into the hands of the people, the Constitution, submitted to them by this Convention, under careful consideration, have instructed me to report that they recommend that this Convention do provide for the publication and distribution of 200,000 newspaper supplements containing the Constitution and Schedule, 10,000 of which shall be printed in the German, and 10,000 in the Scandinavian language.

All of which is respectfully submitted,

H. A. HUMPHREY,
Chairman Committee.

Mr. Sterling: The Judiciary Committee have a report on a matter referred to it.

Mr. McFarland sends a report to the Secretary's desk.

The Clerk reads the report of the Committee on Judiciary as follows:

MR. PRESIDENT:—

Your Committee on Judiciary, to whom was referred the question as to whether this Convention has the legal power to provide for the election of a circuit clerk at the October election, direct me to report that the Committee, having had said question under consideration, are of the opinion that the Convention has the legal power to provide for such election, and recommend that provision for the election of such officer be made in the Schedule and Ordinance.

THOMAS STERLING,
Chairman Judiciary Committee.

Clerk reads the report of the Committee on Legislative Department, as follows:

Sioux Falls, July 25

MR. PRESIDENT:—

Your Committee on Legislative, to whom was referred Article III, entitled, "Legislative Department", has considered the same and have compared said Article III with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article III of the

Constitution, and that the same is in accordance with the Sioux Falls Constitution and the Omnibus Bill.

No amendments made.

A. B. McFARLAND,
Chairman

SAMUEL A. RAMSEY,
B. F. LYONS,
JOSEPH ZITKA.

Mr. Hole offered a substitute as follows:

Sioux Falls, D. T., July 25, 1889.

MR. PRESIDENT:—

Your Committee on Schedule and Submission, to whom was referred, "An ordinance irrevocable without the consent of the United States and the people of the State, relating to religious toleration, public lands, taxation of lands, debts of the Territory of Dakota and public schools," have had the same under consideration and have instructed me to report as follows:

That the following be a substitute for the above described ordinance, and that the following be substituted as Article XXII of the Sioux Falls Constitution, as being directed by the Act of Congress, known as the "Omnibus Bill", and your Committee recommend that the following be adopted as Article XXII "Compact with the United States", and that the same be adopted by this Convention.

ARTICLE XXII.

COMPACT WITH THE UNITED STATES.

The following article shall be irrevocable without the consent of the United States and the people of the State of South Dakota expressed by their Legislative Assembly.

First: That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

Second: That we, the people inhabiting the State of South Dakota do agree and declare, that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries of South Dakota; and to all lands lying within said limits owned and held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States the same shall be and remain subject to the disposition of the United States and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.

That the lands belonging to citizens of the United States re-

siding without the said State, shall never be taxed at a higher rate than the lands belonging to residents of this State. That no taxes shall be imposed by the State of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the United States, or reserved for its use. But nothing herein shall preclude the State of South Dakota from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relation and has obtained from the United States, or from any person a title thereto by patent or other grant, save and except such lands as have been, or may be granted to any Indians or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, all such lands which may have been exempted by any grant or law of the United States, shall remain exempt to the extent, and as prescribed by such act of Congress.

Third: That the State of South Dakota shall assume and pay that portion of the debts and liabilities of the Territory of Dakota as provided in this Constitution.

Fourth: That provision shall be made for the establishment and maintainance of systems of public schools, which shall be open to all the children of this State, and free from sectarian control.

By order of Committee,

By L. H. HOLE, Chairman.

Mr. Jolley: That was a mistake; there are two reports accompanying that.

The President: Consideration of reports of Standing Committees.

Report of the Committee on Legislative Apportionment.

Mr. Van Tassel: I move that the report be adopted.

Which motion received a second.

The Clerk reads at this point the report of the Committee on Legislative Apportionment as follows:

Sioux Falls, July 24, 1889.

MR. PRESIDENT:—

Your Committee on Congressional and Legislative Apportionment, to whom was referred Article XIX of the Constitution, having had the same under careful consideration, beg leave to submit the following report relative thereto, and in which report there are no changes of the Constitution, except as relates to the reapportionment of districts as provided for in the Omnibus Enabling Act, and adding thereto a provision that the State shall constitute one Congressional district, from which two (2) Congressmen shall be elected at large. All of which changes are within the provisions of the Enabling Act, and herewith report Article XIX with said changes incorporated therein and respectfully recommend the

adoption of the changes and the resubmission of the Article as amended.

All of which is respectfully submitted,

C. H. VAN TASSEL,
Chairman.

W. H. MATSON,
J. V. WILLIS,
R. F. LYONS,
A. O. RINGSRUD,
JOSEPH ZITKA,
M. P. STROUPE,
Wm. S. O'BRIEN,
SANFORD PARKER,
E. E. CLOUGH,
M. R. HENINGER,
I. ATKINSON,
C. R. WESCOTT,
T. W. P. LEE,
E. G. EDGERTON,
C. A. HOULTON,
J. G. DAVIES,
H. M. WILLIAMSON,
S. F. HUNTLEY,
J. A. FOWLES,
GEO. H. CULVER,
T. F. DIEFENDORF,
C. G. COATS,
T. W. THOMPSON.

The President: The report of the Committee on Legislative Apportionment is before the Convention and the Chairman of the Committee moves its adoption. Is the Convention ready for the question?

Mr. Sterling: I move as a substitute that the report of this Committee be postponed until tomorrow; I will say that this report is just received; we have had no opportunity to examine it until the last few minutes; it is an important report; I think we should have further opportunity to investigate it.

Mr. Wood: I would suggest that it be postponed until eight o'clock tonight, as I understand we meet this evening.

The motion to postpone, by rising vote, was declared lost.

The President: The question before the Convention is upon the adoption of the report of the Committee on Apportionment.

A Voice: Let it be by roll call.

Which was accordingly done, with the following result:

Those voting aye: Anderson, Atkinson, Buechler, Clough,

Cook, Cooper, Corson, Couchman, Craig, Culver, Davies, Dickinson, Diefendorf, Downing, Eddy, Edgerton, of Yankton, Fellows, Fowles, Goddard, Hall, Harris, Hartley, Heninger, Hole, Houlton, Huntly, Humphrey, Jeffries, Jolley, Kimball, Lee, Lyons, Matson, O'Brien, Peck, Ramsey, Ringsrud, Schollard, Sherwood Smith Spooner, Stoddard, Stroupe, Thompson, Van Buskirk, Van Tassel Wescott, Wheeler, Whitlock, Willis, Williams, Williamson, Wood of Pennington, Wood of Spink, Young, Zitka, and Mr. President. (57).

Those voting no: Gifford, McFarland, and Sterling. (3).

Mr. Harris: I move to reconsider the vote by which the report was adopted and lay the motion upon the table.

Which motion prevailed.

The President: Report of Select Committees.

Mr. Clough offered the following report:

Sioux Falls, Dakota, July 25, 1889.

MR. PRESIDENT:—

Your Special Committee to whom was referred the communication from the officers of the American Sabbath Union, having carefully examined the same and the matters therein referred to, beg leave to submit the following report.

That in our judgment, this Convention acting under enumerated powers fixed by and contained in the Act of Congress known as the "Omnibus Bill", have no power to change, alter or amend the Sioux Falls Constitution of 1885, by inserting the provision named in said communication, nor any similar provision, for the reason that the power to do so is not conferred upon this Convention by said act of Congress.

Your Committee further recommends that the Chief Clerk of this Convention send in writing to the Hon. Elliott F. Shepard Gen. O. O. Howard, U. S. A., Rev. J. H. Knowles, D. D., Rev. Wilbur F. Crafts, D. D. officers of the American Sabbath Union, the following communication:

GENTLEMEN:—

We, the Constitutional Convention of South Dakota, hereby acknowledge the receipt of your telegraphic communication bearing date of July 20, 1889, recommending the insertion into the Constitution of South Dakota of certain provisions relating to the observance of the Sabbath Day.

We have the honor to inform you that your communication was referred to a special committee of this Convention and said Committee, after careful and mature consideration of your communication, made and submitted to this Convention the following report:

Your Special Committee to whom was referred the communication from the officers of the American Sabbath Union, hav-

ing carefully examined the same and the matters therein referred to, beg leave to submit the following report:

That in our judgment, this Convention, acting under enumerated powers fixed by and contained in the Act of Congress known as the "Omnibus" Bill, have no power to change, alter or amend the Sioux Falls Constitution of 1885, by inserting the provisions named in said communication, nor any similar provision for the reason that the power to do so is not conferred upon this Convention by said act of Congress, which said report was unanimously adopted by the Convention.

It is therefore apparent that no further action can be taken by this Convention on your communication and the matters therein referred to.

Respectfully submitted,

E. E. CLOUGH,
S. F. HUNTLEY,
J. V. WILLIS,
SAMUEL A. RAMSEY,
CHAUNCEY L. WOOD.

Mr. Clough: I move the adoption of the report.

Which motion received a second and on reaching a vote, prevailed.

Mr. Wood: I desire to move the adoption now of the report of the Judiciary Committee, relative to the special matter referred to it, relating to the Clerks of the Circuit Court at the coming election.

The President: It can only be taken up by consent.

Mr. Hole: I think it is beyond our powers to take it up and adopt it now, because other Committees have decided to the contrary. I would think it would be better to refer it to a special committee.

Mr. Van Buskirk: I desire to suggest that there is some difference of opinion in that Committee, whether it is thought best to submit a minority report I am not able to say. As far as my own opinion is concerned I am opposed to it; I do not think it is within the purview of the Convention. I object to its being taken up at this time.

The President: Having passed the order provided by the rules, I am of the opinion that it cannot now be considered only by suspension of the rules.

Mr. Wood: I move that the rules be suspended that the Con

vention consider the report of the Judiciary Committee made this morning.

The motion was declared lost.

Mr. Humphrey: For two days the report of the Committee on Education and School Lands was deferred by request and if it would be in order before we pass that head,—

The President: That is under a special order; as soon as we reach that order of business it will be considered.

The President: Reports of Select Committees.

Consideration of reports of Select Committees.

Presentation of Resolutions and Propositions relating to the Constitution.

Special Orders are now before the Convention.

MR. PRESIDENT:—

Your Committee on Education and School Lands, to whom was referred Article (8) Eight of the Constitution, entitled "Education and School Lands", having had the same under careful consideration, beg leave to report the following changes and amendments necessary to comply with the provisions of the Omnibus Enabling Act, to-wit:

First: To insert the words "and other" in the title.

Second: To strike out in the first sentence of Section 5 the words, viz: "Unless, after the year A. D. nineteen hundred, two successive Legislatures concur in a law otherwise directing".

Third: To insert the word 'South' before Dakota in Section II.

Fourth: To insert the words, "and all lands donated for other than educational and charitable purposes," after the word "section" in the second line of Section 8, and we herewith report Article VIII, with the changes and amendments aforesaid incorporated therein.

And we respectfully recommend the adoption of the amendments and the submission of the Article as amended.

H. A. HUMPHREY,
Acting Chmn. of Committee.

C. G. COATS,
F. G. YOUNG,
J. DOWNING,
S. S. PECK,
W. H. MATSON,
GEO. H. CULVER,
S. F. HUNTLEY.

Mr. Humphrey: I move the adoption of the report of the Committee.

Mr. Corson: I move to strike out of the report, Amendment

No. 4, which is the last amendment, and to substitute for Sec. 8, as reported, the original Sec. 8, of the Sioux Falls Constitution. The object, I understand, of the amendment seems to be to include in that provision, railroad and school and University lands; the lands appropriated by the National Government for a capitol, fifty thousand acres.

Now, the first point I make in this motion is, that an amendment of the Constitution is not required or allowed. Under that provision Congress has donated to us for capital purposes fifty thousand acres of land, or for buildings at the capital. There is nothing in the Enabling Act requiring that to be included in the provision, providing for the sale of school lands; there is nothing in our Constitution requiring it. It is an amendment which would be like any other amendment proposed to our Constitution and it is not made necessary by any provision of the Enabling Act and is therefore improperly made at this time; it is not permissible, in other words.

Second: I make two propositions, that is that it would be injudicious at this time to include that land appropriated for the capital buildings in the provisions relating to our school and University lands. We all know that the system provided for these school and University lands is quite complicated; that they cannot, be sold for less than \$10 per acre; that special appraisals have to be made; have to be sold on long time, and a great many provisions which are perhaps proper enough as to the educational lands so that we could easily dispose of them. This question of the provision made for the capitol buildings is something that will require a different treatment. It cannot be very long before we will have a fixed place for capital and we will need buildings. Now, will this action be wise or judicious? Shall we require the people of the Territory to put their hands in their pockets and build the capitol that subsequent generations may get the benefit of the rise of these lands? I think not; therefore for both reasons. First: That it is not permissible to make this amendment, and second: That it will be injudicious to make it. I move the amendment.

Now, in order that the Convention may fully understand it if they will refer to Section 17 of the Omnibus Bill, they will find in the second subdivision the following language:

That in lieu of the grant of land for purposes of internal im-

provement made to new states by the 8th Section of the Act of September 4th, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September 1st, 1850, and in Section 2479 of the revised statutes, making a grant of swamp and overflowed land; to certain states, which grant is hereby declared is not extended to the states provided for by this act, and in lieu of any grant of saline lands to any states, the following grants of land are hereby made, to-wit:

To the State of South Dakota: For the School of Mines, 40,000 acres; for the Reform School, 40,000 acres; for the Deaf and Dumb Asylum, 40,000 acres; for the Agricultural College, 40,000 acres; for the University, 40,000 acres; for the State Normal Schools, 80,000 acres; for public buildings at the capital of said State, 50,000 acres; and for such other educational and charitable purposes as the Legislature of said State may determine, 170,000 acres; in all, 500,000 acres.

By turning to Section 8 of the original act of our Constitution Section 8, of Article VIII, it will be found that there is no necessity for this amendment as these lands come within the provisions of that section clearly. It reads: "All lands mentioned in the preceding sections". The preceding section,—Section 7 of Article VII reads: "All lands, money or other property donated, granted or received from the United States or any other source for a University-Agricultural College, Normal School or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such land as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the grants or gifts. The principal of every such fund may be increased, but shall never be diminished, and the interest and income only, shall be used. Every fund shall be deemed a trust fund held by the State, and the State shall make good all losses therefrom that shall occur in any manner." Section 8, which I propose as an amendment, is as follow: "All lands mentioned in the preceding section shall be appraised and sold in the same manner and by the same officers and board under the same limitations, and subject to all the conditions as to price, sale, and approval provided above for the appraisal and sale of lands for the benefit of public schools, but a distinct and separate account shall be kept by the proper officers of each of such funds." Now, Mr. President, and gentlemen of the Convention, you will see, taking these two sections together, all the lands that have been granted by Congress and by virtue of this section, becoming part and parcel of this section except this 50,000 acres that has been mentioned as for the capital buildings. The object of this amendment is to include that 50,000 acres. I insist that it is not a proper amendment to make at

this time. I further argue that it is not the object of Congress in making this donation that they should not be included among that class of lands for the reason that they fixed no limitation to the price of these lands as I understand it, but for the other lands donated for educational purposes they have made they limit at \$10 per acre so that they properly come within the section that I have read. I argue therefore that the amendment should be made to this report and that these 50,000 acres be left to the disposal of the Legislature in the manner that they deem most judicious for the buildings at the capital. I believe the Legislature can be trusted in this manner; they will all have an interest in it to get the largest price and make just use of the proceeds.

The amendment offered by Mr. Corson was at this point seconded.

Mr. Humphrey: I have not, before, had any opportunity to present to the Convention, the reasons that lead the Committee to recommend the amendment in their report. In the first place, they found in the Constitution, restrictions and safeguards thrown around the lands that the state then possessed or was likely to possess. Following in the spirit of the Constitution and the Enabling Act, the Committee felt that they should provide the same restrictions for these lands. The intention of the report is to protect the lands coming into possession of the State from any possible chance of slipping away from the people. It is well known in the history of states, and the state no further east of us than Iowa, when they had like us, donations of land, that they were careless in their legislation and before they were aware of their folly and turned to see where they were, they were gone. As the Committee understood this, and as I now understand it, the result of these words in the Eighth Section to simply throw around these other lands the restrictions as to appraisal and approval of sale. Further than that, as we understand, and as we find in the Omnibus Bill, other lands than those in Section XVII was donated to the State, including large lands for the penitentiary and such other institutions that are other than educational lands. The clause was to protect the people, not to force the burden upon them to build the capitol by taxation. We are not likely to be called upon to build a capitol for South Dakota for five years, judging by the innumerable contestants. This next year they will vote for temporary location of the capital, then after that the two largest places will vote. We will not see this election contest settled inside of five years. It is a fair presumption that many of these lands will

be of the value of ten dollars per acre even at that time, and even then you would not have the right to dispose of these lands to build the capitol, but under the Constitution, all that would be necessary would be to submit to the people at the next election, and if they desire to sell the lands for less money at that time to build the capitol it will be within their power to do so. It seems to your Committee that we should assist in putting these restrictions and safeguards around these lands till after that time.

Mr. Davies: I would ask if the words "educational and charitable" would not cover the penitentiary lands and other lands referred to by the gentleman from Faulk? The question in my mind is whether that clause did not cover all the lands.

Mr. Humphrey: I would say that lands donated for educational and charitable institutions are generally spoken of as "school lands", "Agricultural College lands".

Mr. Hole: I wish to raise this point. Under the provision of that part of the Constitution as submitted by the Committee, it provides that these lands shall be appraised and sold in a certain way. It provides further that this shall be a permanent fund; that nothing but interest is to be used, as I understand it. The intention of giving 50,000 acres of land to build the capital buildings would hardly be consistent with the general endowment fund. In the proposed part of the Constitution, as submitted, the 50,000 acres will be sold and that money kept as an endowment fund for the capitol, that was not the intention. The intention was to sell the land and build the buildings with it, not to endow the building of the capital.

Again, the fact that we do not include it and put it under the control of the school department, but leave it to the Legislature does not force the Legislature to sell it. I take it that the Legislature will be as careful and as honest and particular about taking care of the funds that is left for the State of South Dakota, as any body of men that can possibly be called together or elected by the people and the mere fact that we leave this to our Legislature who are to use their wisdom in raising the funds to build State buildings, does not force us to sell it at an inadequate price or at inopportune time.

Mr. Young: The gentleman who has just had the floor, I think, is laboring under a false impression as to the amendment desired by the Committee on Education and School Lands. The

amendment desired is incorporated in Section 8, and Section 8 does not provide for building up any permanent fund at all. Section 8 has reference simply to the manner of selling, the Board for executing the sale, the price and the approval of the sale and the appraisal for the sale and nothing at all about the securing of a fund as a permanent fund which is incorporated in Section 7 and further, I think we are not quite as intelligent upon this question as a body as we ought to be because this point has not been brought up.

In the previous section, Section 12, I find that Uncle Sam has been still more generous to us in his endowments for the public building fund. He there contributes another little lot of fifty sections, making eighty two sections in all that this State is endowed with for a public building fund.

This makes a large fund and will make therefore the piling up of the fund more rapid, even if very strict safeguards are thrown around them; and as has already been intimated, our permanent capital site may not be determined on for the next five years. There will be no necessity of any work on a large capitol building, a building that ought to be an ornament to our State, for some time, in any event. I do not think that we ought to be in any unseemly haste towards starting a capitol building here that is to do for all time.

Now, Mr. President, in reference to the disposition of these safe-guards, we will have to have some agents for the State for the purpose of disposing of these lands for the application of the funds. It seems to me the Board to whom it is proposed to intrust these lands in the amendment recommended by the Committee on Education and School Lands, is just exactly the Board that is best adapted for this purpose. They are intelligent in these matters because they will have had experience disposing of other lands and caring for all such matters. If our amendment is rejected in regard to this matter it will simply amount, not only to throwing away all of these safe-guards, but to the appointment of another Board, which will be an element of extra expense. As to the point of our lack of authority on the part of the Committee in introducing this amendment at this place you will see by reference to the Omnibus Bill that these endowments, both of them for public buildings, are sandwiched in between the endowments for other purposes. You will see in the latter part of Section 17, that the intention was plainly the same in regard to all lands on the part

of Congress for it says: "All the lands granted by these sections, including the several grants for the several purposes shall be held and appropriated and disposed of exclusively for the purposes herein mentioned, in such manner as the Legislature for the respective States may severally provide" as we have thrown safeguards around these and other separate endowments, and why should we separate this one single endowment out and put it in condition where it will likely be sacrificed. It seems to me a very important subject and is one in which we must make haste slowly.

Mr. Woods: It seems to me that there can be but little question about what our actions can be. There are some very radical amendments for instance,—the report of the Committee calls for striking out a section and the words "and, after the year 1900 two successive Legislatures concur in a law otherwise directing". To strike out these words is not necessary. We have no authority to strike these words out of the Constitution at all; I think that will be apparent to any gentleman of the Convention upon close and careful thought for a few minutes. Then, inserting of the words "and other" in the title is as radical an amendment as striking out the words from Section 5,—something we have no authority to do. I do not remember whether the amendment covers all the proposed amendments in Constitution here or not. The insertion of the words in the fourth subdivision of the report, "and all lands donated for other than educational and charitable purposes" is something we have no right to place in the Constitution as an amendment. It is not necessary, in other words, to carry out the provision of the Omnibus Bill that these amendments be made, therefore we are without authority to make them. It seems to me, these propositions are clear and plain. The argument that it would be desirable to place these amendments in the Constitution is not an argument which reaches the difficulty. It may be desirable to place them in the Constitution, it is not necessary to discuss that; we find ourselves without power to make the proposed amendment. It is not any answer to the argument that it would be wise to place them there within the purview of the law governing the lands donated for capital purposes for the reason sometime in the future it would cost the creation of some Board and thus entail some expenses that might be avoided. We find ourselves not in the possession of that power to pass amendments under the Constitution. This Constitution has been ratified and adopted by the

people and we are authorized by Congress to make certain amendments and changes. These are merely amendments and not changes; now we can enact only such amendments under the provisions of the Omnibus Bill as are necessary to carry into effect the provisions of the Omnibus Bill. I think the gentlemen of the Convention will do well to consider the absence of power in voting the proposed amendment. If we can make these amendments I submit the proposition that we can throw away the Constitution of 1885 and make a new one. If we have sufficient power to make these proposed amendments,—not changes; they are amendments—we have that power—we have the power to make a new Constitution entirely and call it amendments.

Mr. Corson: I desire to call the attention of the Convention to Section 11th to show that it was not the intention of Congress that these capital lands should be included in the educational lands for the purposes of the State. Section 11th of the Omnibus Bill reads, "That all lands herein granted for educational purposes shall be disposed of only at public sale at a price not less than \$10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said school. It will be seen in speaking of educational lands they use the words "that they shall not be sold for less than \$10 per acre", but when they come to speak of the other lands they use no such terms and that makes the proposition of Mr. Woods stronger,—that we are not allowed to make these amendments. But we cannot find any provision in the Omnibus Bill that would warrant us. It seems to me that this Convention ought to favor this second amendment.

Mr. Sherwood: In regard to our powers to insert this amendment proposed, it seems to me this other amendment in striking out the words "unless after the year 1900 two successive Legislatures concur in a law otherwise directing" would be unnecessary to conform with this section of the Omnibus Bill, that "all lands shall be disposed of only at public sale and at a price not less than \$10 per acre,"—I do not hardly see how that amendment can stand and yet the Legislature have power after 1900.

Mr. Humphrey: I wish to call the attention of the Convention to the fact that by inserting the amendment proposed in the 8th Section does not throw around these lands the restrictions contained in many other sections relating to the permanent fund. It is only a restriction in regard to the rights of appraisal and ap-

proval pertaining to the same only. We find that the Constitution has its own safeguards and protects all the lands that the State has cognizance of and when it is claimed that the Legislature will take necessary care of these lands we have only to judge the future by the past and if the Convention which framed this Constitution has that same confidence in the Legislature, why did they place these restrictions upon these lands? The restrictions should be placed in the Constitution. This having been injected as I have said by this bill it will be a portion of our duty to guard and protect it the same as other public lands. In regard to the amendment of the 5th Section, to which your attention has been called by Mr. Sherwood, under the Constitution you would be liable and would violate the provisions of the Omnibus Bill. The Omnibus Bill states that these lands should never be sold for less than \$10 per acre; would you empower the Legislature after a certain year to sell them for less? In regard to the amendment to the title, I would say this, that we depended upon amendment Number Four. If that were enacted, that necessarily amended the title if not concurred in by the Convention that would be stricken out.

Mr. Corson: I move to strike out of the report amendment number four and substitute for Section 8 as reported, the original Section 8 of the Sioux Falls Constitution.

Mr. Dickinson: It seems to me, the question turns on this point: In the first place whether the Committee on Education and School Lands has not the right to extend its jurisdiction so that it will include the capital lands and whether in an article of the Constitution providing for Education and School Lands we can arrange for capital improvements. I have been surprised that the Chairman of the Committee makes this report. He has been one of the greatest sticklers for preserving intact the Sioux Falls Constitution. In this matter he presents a most decided change of front that has been noticed yet on the floor of this Convention.

Mr. Humphrey: I would say that I am aware that I am open to that charge. I had myself advised that this matter be turned over to the Schedule Committee but many thought that it would be the proper place for it to be brought before this Convention.

Mr. Woods: I propose as an amendment to the amendment,

that the words "and others" in the first sub-division of the report be stricken out of the report.

Which motion received a second.

Mr. Young: Now we are by our Constitution to throw safeguards and a very many of them around all public lands we had then or that the State had any expectation of. These lands were given to the State by this Enabling Act, and it is only natural to suppose that had the Constitutional Convention of 1885 been aware of the generosity of the general government they would have put in the provision that the Committee proposed.

The President: The question before the Convention is upon the adoption of the report of the Committee on Education and School Lands to which Mr. Corson proposed the following amendment, to strike out of the report, amendment number four, and to substitute Section 8, as reported by the Sioux Falls Constitution in lieu of Section 8, as reported by the Committee. Mr. Woods proposes an amendment to the amendment by striking out the words "and other." As many as are in favor of the amendment proposed by the gentlemen from Pennington say aye; the ayes have it. The motion is now upon the amendment as amended. Mr. Sterling moves that the report of the Committee on Education and School Lands be amended so that Section 9 of Article VIII shall read as follows: "The lands mentioned in this Article may, under such regulations as the Legislature may prescribe, be leased for periods of not more than five years in quantities not exceeding one section to any person or company. All rents shall be payable annually in advance, nor shall any lease be valid until it receives the approval of the Governor."

Mr. Sterling: I move the adoption of the amendment.

Motion received a second.

Mr. Wescott: I move that the motion be laid upon the table.

Which motion received a second and prevailed.

The President: The question is upon the report of the Committee as amended.

Mr. Woods: Before the motion is put, I desire to modify what I have said,—what I have heretofore said, concerning the proposed amendment of Section 5 of Article VIII. I am inclined to think what I said before was said without due consideration.

The question of the adoption of the report of the Committee, upon reaching a vote, was declared by the President to be duly adopted.

The President: Under the Special Order the consideration of the report of the Committee on Name and Boundaries will be the next order of business.

The Clerk reads the report as follows;

(Here insert it.)

The President: The Chairman of the Committee on Name and Boundaries moves the adoption of the report.

The Convention, by a unanimous vote, adopted the report of the Committee on Name and Boundaries.

The President: The second report made by this Committee on Seat of Government, is now before the Convention.

Clerk reads the report as heretofore made:

(Here insert it.)

The Convention, by unanimous vote adopted the report of the Committee on Name and Boundaries, the second sub-division, Seat of Government.

The President: That finishes the Special Order. What is the further pleasure of the Convention?

Mr. Clough: At the request of the Chief Clerk, I introduce this resolution:

WHEREAS, in the records of this Convention the words "Chief Clerk" and "Secretary" are used interchangeably,

RESOLVED, that when so used, that they shall be deemed to pertain to the same person and office,—that of Chief Clerk.

The President: The resolution will be referred to the Committee on Rules.

Mr. Spooner: In order to facilitate business it has been suggested that we have a session tomorrow morning. I move that the rules be suspended and that when we adjourn it will be until 9 o'clock tomorrow morning.

Mr. Davies: Have we not already said we would have a session this evening?

The President: It is moved that the rules be suspended and when we adjourn, it be until tomorrow morning at 9 o'clock.

This motion prevailed.

Mr. Clough: I move that we instruct the Committee on Schedule to bring us a report.

Mr. Jolley: I move an amendment,—that the gentleman from Codington have a club and be instructed to make the Committee bring it.

Mr. Humphrey: This is near the close of our session; we are anxious to expedite the work,—the work that is left,—the principle part of which pertains to the Committee on Schedule. I renew the motion of the gentleman from Codington that they be instructed to report tomorrow morning at 9 o'clock.

This motion received a second and on a division of the House prevailed by a vote of 31 ayes and 26 noes.

Mr. Humphrey: I move you the report of the Committee on Schedule be made a special order tomorrow morning at 9 o'clock.

Mr. Jolley: That is pretty good,—making a special order of something you are not in possession of.

Mr. Willis: I second the motion that we make it a special order.

Mr. Corson: There are matters in that report that cannot be inserted until this Committee from Bismarck reports.

Mr. Hole: There has been a special call for the report of the Committee on Schedule and Ordinance. I will explain that the Committee has been at work pretty nearly night and day. From the fact that they have to take up the work after these Committees have reported. We do not want to report, and you do not want any report that is not right. We expect to work all night at that and get it here tomorrow morning. I think it is unfair and uncourteous to pass this kind of a resolution at this time. You know naturally as well as you want to know, that this Committee want to report just as quick as they can. We are going to report tomorrow morning if possible, and if it is not possible it will not be here. You do not want a faulty report. This question referred to the Judiciary Committee two weeks ago that has just come in from the Committee. We had to work after all these Committees came in. I think you will find that you have been just a little bit hasty in this matter. This Committee wants to report and get away just as badly as any gentleman in this Convention. This Committee has worked more hours than any other Committee in this Convention. It strikes me just a little bit previous to make this kind of a motion.

The President: The motion before this Convention is that the report of the Schedule Committee be made a special order

for tomorrow morning at nine o'clock. I will say that the Committee on Schedule have two reports in and the Convention has the right to make them the special order for tomorrow morning at 9 o'clock.

The motion prevailed.

Mr. Fellows: I move the reconsideration of the motion ordering the Committee to report tomorrow morning at 9 o'clock.

This motion prevailed; the motion was reconsidered.

The President: The question before the Convention is, shall the Committee on Schedule and Ordinance be instructed to report tomorrow morning at 9 o'clock.

Mr. Clough: After talking with the Committee I think we understand it a little better. I will make another motion, that the Committee on Schedule be requested to report next Thursday afternoon. I make that as an amendment that they be requested to report next Thursday afternoon. These gentlemen claim that they cannot report until the Committee get back from Bismarck. I would like to have these Bismarck men get home next Thursday.

Mr. Hole: I would say that we want to report before that time. We expect to report tomorrow morning; we expect to make a partial report.

The President: The question is upon the amendment of the gentleman from Codington, that it be made a special order for next Thursday.

Mr. Willis: I move to lay the amendment on the table.

Which motion received a second and duly prevailed.

The President: The question before the Convention now is, shall the Committee on Schedule and Ordinance be instructed to report tomorrow morning at 9 o'clock.

Mr. Humphrey: I wish to ask a question. I am under the impression that our duty is simply to incorporate the agreement reached by the gentlemen of the Commission and if so, what have the Schedule Committee got to do with it?

Mr. Jolley: It is by Ordinance.

Mr. Hartley: I understand we have nothing to do with the report from Bismarck; it is for this Convention to put it through. It has never been referred to our Committee. We can report tomorrow morning.

The President: The question is, shall the Committee on Schedule be requested to report tomorrow morning.

The motion reaching a vote, the President declared the motion lost.

On motion the Committee adjourned until tomorrow morning at 9 o'clock, July 25th, 1889.

TWENTY-THIRD DAY.

Sioux Falls, S. Dak., July 26th, 1889.

Nine o'clock A. M.

Pursuant to adjournment, Convention re-assembled with President Edgerton in the Chair.

Prayer was offered by Rev. Mr. Lee as follows:

Most holy, All Wise and ever to be adored God, Ruler of the Armies of Heaven, and the dwellers upon earth, before whom angels and arch-angels bow in reverence and godly fear; we thank Thee that Thou hast made us but little lower than the angels, and endowed us with intellectual faculties whereby we can take a retrospective view of the past, consider the present, and by a lively faith anticipate the joys to come. Great God, as we have met to consider the greatest question that may come before this Convention we ask for strength mentally, physically, and morally that we may do right by our constituents and the inhabitants of South Dakota without fear or favor. Oh God, bless all our loved ones at home, ward off disease and accident, let nothing thwart our pathway that shall lead us astray, and finally save us all in Heaven where we may enjoy each other's society, refer to the acts of this life well done before, and after we are a million years old. We ask all in the name of Christ, our Mediator and Redeemer,

AMEN.

The Clerk reads the Journal of the preceding day.

The President: I do not know that I understand fully the order made yesterday by the Convention as to the purpose of this morning's session; I shall decide unless objection is made that this morning's session is for the purpose just as named in the motion for the session this morning, and that the afternoon's session will take place as usual with the regular order of business; if I am correct in that, the first business for the consideration of the Convention is the report of the Committee on Schedule.

Mr. Van Buskirk: I asked leave yesterday to submit a report

of the minority of the Judiciary Committee upon the question of the power of this Convention to prepare for the election of a Clerk of the Circuit Court. While I would have been glad to have deferred it a few minutes longer, as some members of the Committee who are not present desire to sign it, I will say I do not desire to discuss this question now until the Schedule Committee report as they may agree; otherwise I wish to be heard on this report.

The Clerk reads as follows:

MR. PRESIDENT:—

The undersigned members of the Judiciary Committee would respectfully represent that we have carefully examined the Sioux Falls Constitution and the Omnibus Bill, and we are unable to find any provision or authority in either by which this Convention can provide by ordinance or otherwise for the election of any other than State officers at the election held for the adoption of the Constitution. That neither the Clerk of the Court, Register of Deeds, or any other of the County officers are by the said Constitution or the Omnibus Bill, considered as State officers, nor have they been treated as state officers in the administration of the affairs of government, but especially does the said Constitution treat and consider these officers as county officers and provides for their election at the next general election after the admission of the State into the Union. We therefore beg leave to dissent from the opinion of the Committee heretofore submitted.

S. B. VAN BUSKIRK,
GEO. C. COPPER,
H. F. FELLOWS,
THOS. STERLING,
SAMUEL A. RAMSEY,
H. W. EDDY,
A. J. BERDAHL.

The President: Are there any further reports from Standing Committees?

Mr. Stroupe: I have a report from the Committee on Name and Boundaries and Seat of Government to which was referred the resolution of Mr. Goddard, of McCook County, relative to the Seventh Standard Parallel.

The Clerk reads the report referred to as follows:

Sioux Falls, July 26, 1889.

Your Committee on Name, Boundaries and Seat of Government, to whom was referred the resolution presented by Mr. Goddard, of McCook County, relative to the Seventh Standard Parallel, have considered the same, and beg leave to report, that in the opinion of your Committee the Constitutional Conventions of North and South

Dakota are not authorized by the Omnibus Bill to determine what constitutes the true Seventh Standard Parallel. We therefore respectfully recommend that no action be taken on the resolution.

Respectfully submitted,

M. P. STROUPE, Chmn.
S. A. WHEELER,
JONATHAN KIMBALL,
W. T. WILLIAMS,
E. G. EGERTON,
Wm. VAN EPS.

The President: What will you do with the report?

Mr. Stroupe: I move that we adopt the report.

The motion prevailed and the report was declared adopted.

The President: A matter went over yesterday and has not been adopted yet; that was the report of the Committee on Printing with reference to the publication of 200,000 supplements containing the Constitution. Is the Convention ready for the consideration of that report?

Mr. Sherwood: I move an amendment to the report, that in the place of the amount of 10,000, shall be printed in German and 10,000 in the Scandinavian language, it shall read twenty thousand be printed in each.

Mr. Zitka: I move as an amendment that ten thousand copies be printed in the Bohemian language.

The President: The gentleman from Clark moves an amendment to strike out "10" where it occurs and insert the word "twenty" with reference to the publication of this in the German and Scandinavian languages; and the gentleman from Bon Homme proposes an amendment to the amendment by adding thereto ten thousand in the Bohemian language; is the Convention ready for the question?

Mr. Sterling: I wish to say a word on this proposition in reference to what the Committee had under consideration; it was proposed in Committee that the distribution of these copies of the Constitution be as newspaper supplements; we estimated the number of newspapers that would probable convey these copies to the people speaking those languages, the Scandinavian and the German and allowing the largest possible estimate we could figure it out that there would be more than ten thousand conveyed in that way to the Scandinavian and Germans, and that that was the reason for making the amount ten thousand in each case. But if there are others who are better informed as to the number who will be reached

in this way through the newspaper supplements,—the people speaking those different languages, I suppose the Committee would not object; I wished simply to state that for the consideration of the Convention:

The President: The question before the Convention is upon the adoption of the amendment to the amendment, that ten thousand copies be printed in the Bohemian language.

The motion prevailed and the amendment was declared so amended.

The President: The motion now recurs upon the amendment as amended.

The motion prevailed and was so declared by the President.

The President: The motion now recurs on the report as amended; as many as are of the opinion that the report as amended be adopted,—say aye.

The President: The ayes have it; the report as amended is adopted.

Mr. Wood: I understood the chair to announce that this meeting was called for the purpose of considering the report of the Schedule Committee; I do not so understand the proceedings of yesterday; in order to bring the matter before the Convention, I move you, Mr. President, that the report of the Committee on Judiciary relative to the right of the Convention to provide for Clerks of the Circuit Court, be now considered.

The President: It is moved by the gentleman from Pennington that the Convention proceed to the consideration of the majority and minority report upon the powers of the Convention to provide for the Election of Clerks of court. Are you ready for the question?

Mr. Van Buskirk: There are some of the members of that Committee who are engaged this morning on other matters in committee; I think they would desire undoubtedly to be present; I would therefore move as amendment that it be postponed until afternoon, so they might be heard on this matter.

The President: The way to reach that is to vote it down; as many as are of the opinion that the motion prevail say aye. I am unable to determine. As many as are of the opinion that we now proceed to the consideration of the majority and minority report of the committee relative to the Circuit Court Clerks will rise and stand until counted.

The President: The motion is lost. I will proceed then under the order of the Convention.

Presentations of Communications and Petitions.

Mr. Spooner: I have a petition to put in from the legal voters of Kingsbury County with relation to a modified Australian system of voting. (Sent to desk of Clerk.)

Unfinished business of preceding day?

Reports from Standing Committees? I will ask the Clerk to read the list of Standing Committees to see how many Committees have still reports that have not been presented to the Convention; and if the Chairman will announce as the list is read whether they have any further reports to make during the Convention.

The President: Under the special order, are the two reports or partial reports from the Committee on Schedule; first, the report upon Minority Representation.

The Clerk reads the report as follows:

Sioux Falls, S. D., July 24, 1889.

MR. PRESIDENT:—

Your Committee on Schedule and Ordinance to whom was referred Article XXV of the Constitution, entitled, "Minority Representation" having had the same under consideration, beg leave to report that no changes or amendments are necessary to comply with the provisions of the Omnibus Enabling Act.

And we herewith report Article XXV as found in the Constitution, and respectfully recommend the re-submission of the same.

SCHEDULE AND ORDINANCE COMMITTEE,

By L. H. HOLE, Chairman.

The report by vote of the Convention, was adopted.

The President: The next report for our consideration is the report on Prohibition.

The Clerk reads the report as follows:

Sioux Falls, July 24, 1889.

MR. PRESIDENT:—

Your Committee on Schedule and Ordinance, to whom was referred Article XXIV of the Constitution, entitled, "Prohibition," having had the same under consideration, beg leave to report that no changes or amendments are necessary to comply with the provisions of the Omnibus Enabling Act.

And we herewith report Article XXIV as found in the Constitution and respectfully recommend the re-submission of the same.

SCHEDULE AND ORDINANCE COMMITTEE

By L. H. HOLE, Chairman.

The President: The Chairman of the Committee moves the adoption of the report; is the Convention ready for the question?

The report was declared adopted by the President.

The Clerk under direction of the President, reads the report of the Committee on Revenue and Finance, as follows:

Sioux Falls, Dakota July 24, 1889.

MR. PRESIDENT:—

Your Committee on Revenue and Finance, to whom was referred Article XI entitled "Revenue and Finance", have considered the same and have compared said Article XI with the Sioux Falls Constitution and the Act of Congress known as the "Omnibus Bill", and have instructed me to report the following as Article XI of the Constitution and that the same is in accordance with the Sioux Falls Constitution and the changes thereto authorized by the Omnibus Bill.

W. H. GODDARD, Chmn.
C. A. HOULTON,
JOSEPH ZITKA,
C. J. B. HARRIS,
A. O. RINGSRUD,
L. T. BOUCHER,
W. M. VAN EPS,
Committee.

The President: The Chairman of the Committee moves the adoption of the report; are you ready for the question?

The report was, by the President, declared adopted.

The President: The resolution of the Judiciary Committee concerning the Circuit Clerks, is next under the special order; what is the pleasure of the Convention?

I would state for the information of the members of the Convention who were not present a short time ago, it was moved that we proceed to the consideration of the majority and minority report of the Judiciary Committee on election of Clerks of Court; the Convention refused then to consider the question; it is now reached under the special order,

Mr. Jolley: Was the report made a special order? I find it here upon the desk, that is all I know; the motion was made to refer back to that order of business yesterday and the Convention refused; do I understand that it was made a special order this morning?

The President: I am informed that it was not made a special order.

The President: The next I have of the reports not acted

upon is the report of the Committee on Legislative Department.

The Clerk reads the report as follows: (Here insert it).

The President: The Chairman of the Committee moves the adoption of the report; what is your pleasure?

The report was, by vote of the Convention, adopted.

The President: What is the further pleasure of the Convention? We have adopted all the reports I believe except the report of the Committee on Judiciary, in which there is a majority and minority report with reference to the elections of Clerks of Circuit Court and the report of the Committee on Schedule and Ordinance, which the Chairman announces that they are not ready this moment to make.

Mr. Dickinson: I move we take up the proceedings of the report of the Judiciary Committee. Motion seconded.

Mr. Jolley: I object; we cannot refer back without unanimous consent.

Mr. Wood: This comes up in regular order.

Mr. Jolley: The order is passed.

Mr. Wood: It was moved to take it up out of its order; the report comes in in its regular order.

Mr. Jolley: That order is passed, Mr. President.

The President: The order Consideration of Reports of Standing Committees has passed; I called it and there was no response. Then I proceeded to the special order which we have usually taken up after the regular order has been passed. I think the objection is well taken; but by two-thirds vote it may be taken up at this time, that the rules may be suspended and the order taken up and unless otherwise directed by the Convention I shall decide that in order to carry this, it is necessary that two-thirds vote be in the affirmative. As many as are of the opinion that we proceed to consider the majority report of the Committee on Election of Clerks of Court say aye. Call a division.

A standing vote was accordingly taken and resulted as follows:

The President: The ayes are 26, the noes are 23; the vote does not prevail; the rules are not suspended.

Mr. Hole: By some oversight I think the substitute report of Article XXVII has not been adopted by the Convention, in regard to the compact with the United States. I suppose it will be necessary to return to that order of business. I call it up.

The President: Chairman of the Committee on Schedule and

Ordinance moves the rules be suspended in order that the Convention may consider the report made by the Committee on Schedule and Ordinance, with reference to a compact with the United States; are you ready for the question?

The motion on reaching a vote, the President declared "The ayes have it and the rule is suspended".

The Clerk read the report.

Mr. Lee: I move the adoption of the report.

Which motion prevailed and the motion was declared adopted by the President.

Mr. President: I will state for the information of the members who were absent that my understanding of this morning's session was that it was a special session to dispose of the business brought before it that the afternoon session, commencing at two o'clock was the regular session of the day. I stated that that was the motion as to the order of the Convention. If I am correct we proceed at our regular routine work at two o'clock this afternoon. What is the further pleasure of the Convention?

Mr. Dickinson: I move we do adjourn

Mr. Hole: The Committee on Schedule is ready to report. If it is in order now we will hand in our report. I was in doubt as to whether it is in order.

Mr. President: My own interpretation was that we met or that specific purpose, that the report of the Committee on Schedule might be made this morning.

Mr. Hole: The Committee is ready to report.

Mr. President: Is objection made to receiving the report of the Committee on Schedule and Ordinance? It will be received if no objection is made.

Mr. Van Buskirk: I understood that there was a motion before the house to adjourn. I was desirous that this report be on the table of all the members, but I think perhaps we will get along about as fast if we look these over carefully. I would move that we adjourn until two o'clock this afternoon, at the regular time.

Received a second.

Mr. Hole: Bear with me a moment. The printed report as on the desks has been amended by the session this morning and it might be well to read that over and call attention to those amendments and mark them and to that end I suggest that it be read

first and the amendments marked and you can study it at your leisure.

Mr Van Buskirk With the consent of the second and with the privilege of renewing the motion to adjourn, I have no objection to that.

The Clerk here reads the report of the Committee on Schedule and Ordinance, as amended, according to the report of the Chairman of the Committee.

Mr. Van Buskirk: I renew the motion to adjourn.

Which motion prevailed.

The Convention stood adjourned until two o'clock this afternoon,—2 P. M., July 26th 1889.

Two o'clock P. M. Convention reassembled pursuant to adjournment.

The President: The Convention has under Consideration the report of the Committee on Schedule and Ordinance.

Mr. Hole: Do we understand that this is the first order of business? Is this an adjourned meeting or the regular meeting?

The President: I understood this morning that the Convention adjourned last night for a specific purpose to this morning, but upon further examination of the Journal I am persuaded that it was adjournment till nine o'clock this morning. I think the session commenced this morning at nine o'clock of this day and that this is part of the morning session.

Mr. Hole: Then if I understand the report of the Schedule Committee is properly before the Convention. I would move its adoption and wish to add to that motion a few remarks just now. We have entered the danger field and it is with much timidity that I stop upon this thin ice for I know the water is deep. But in submitting this report I refer with no little pride to the work of your Committee. On the superstructure that is to bear us safely over the period of change from a grand Territory to a grand State. Whether or not we have well builded, time alone can tell; we may have left out a brace here or failed to tighten a burr there which may result in weakening our structure. But whatever misfits or mistakes the future may develop will be found to be the out-growth of our peculiar and difficult environment with powers abridged beyond all parallel or precedent in the history of the Constitution. Our task has been to dove-tail together two distinct mechanisms far separated as to political size. It will not be sur-

prising then if some judicial fillings may be found to be necessary to perfect the symmetry of our work. Be this as it may, your Committee will ever remember having worked in harmony at times on different lines but to one common end and looking for one common light and your Committee believes, in submitting this report, they furnish you for your consideration a safe chart to statehood. We agree upon all matters but one; wherein we do agree we ask that no radical change be made without careful and painstaking consideration by this Convention, as this Schedule which we have submitted is the outgrowth of much deliberation and thought, and wherein we differ we ask that there may not be haste. But may every delegate carefully consider the responsibility and possibilities of his vote and act as becomes the dignity and importance of this subject. May it be put in the minds of every member of this Convention to ask wisdom from that unerring source to guide us to rightly consider our duty to our God, to ourselves and to the great State to be; Mr. President, I move the adoption of the report.

Mr. Peck: I beg to move, seconded by Mr. Williams, the following resolution, that Section 7 of the report of the Committee on Schedule and Ordinance be amended by adding the following thereto:

Amendment sent to the desk of the Clerk.

Mr. Peck: I do not propose, Mr. President, to occupy any time at all in discussing this resolution that I have just submitted; That amendment we offered has so fully been gone over by every member, and I think so fully understood, it would be a piece of presumption on my part to expect to enlighten any of the members. I am simply acting as representative of the people who sent me here. I was instructed to get as near the Australian system of voting as I could. That is not the Australian system; I do not claim for it perfection, it is the principal we are after and if the principle of it is adopted we can then go into Committee of the Whole and submit the revision of the resolution, and as I will ever pray. I shall simply confine myself to correcting any person who has mistaken any of the provisions of this resolution; I shall simply claim in the end, the right to explain them and no more; I want no more.

The President: I would ask the gentleman if he prefers to take it up now? I suggest to the Convention I think a more proper and parliamentary method would be to read it section by section

and let this amendment be made as we reach the section. Unless I am directed otherwise, I shall direct the Clerk to read it section by section.

Mr. Peck: As long as my motion stands there I have no objection.

Mr. Van Buskirk: Inasmuch as there are two reports, I would move that the consideration of the report of the Schedule Committee and the two reports of the Judiciary Committee be taken up and considered together.

Motion received a second.

The President: If I remember this report from the Judiciary Committee, it was only their opinion as to a legal question—possibly it may be a recommendation as to the election,—I do not remember.

Mr. Sterling: The Committee did express it as their opinion that the Convention had the power to provide for the election of Circuit Clerk and recommended that to the Schedule and Ordinance Committee and that a provision to that effect be put into the Schedule and Ordinance. That was the report of the Judiciary Committee on that question.

Mr. Jolley: By adopting or rejecting either the majority or the minority reports we can decide one thing or the other and when the Schedule is amended if the majority of this Convention are in favor of electing the Clerk this fall, then it becomes a part of the rule adopted.

Mr. Wood of Pennington: I would suggest there is a carefully prepared amendment.

The President: I think that covers the whole ground.

Mr. Van Buskirk: All I care for is simply to expedite the business of the Convention.

Mr. Wood: I would suggest that we now have the amendment at this time, that would present the question in the proper light before the Convention.

The President: It seems to me the more regular way of reaching these amendments would be in Committee of the Whole, reading it section by section; otherwise we will never get through to the consideration of the report of the Schedule Committee. Unless otherwise directed by the Convention the Clerk will read section by section and when the amendment pertaining to any section, as it is read, the amendment can be offered. The gentle-

man from Hamlin presented his amendment to Section 7 when we read Section 7, I will instruct the Secretary to pause long enough that it may be heard and considered by the Convention.

Mr. Fellows: I move that we go into Committee of the Whole upon consideration of the report of the Committee on Schedule.

Which motion did not receive a second..

The President: Proceed with the reading.

Clerk reads Section 1.

Mr. Young: I move the adoption of this section.

The President: There is pending a motion which is the adoption of the whole report by the Chairman of the Committee.

Mr. Young: The motion is withdrawn.

Mr. Hole: As we will strike a place directly where we cannot agree but will diverge into a long discussion, if it will facilitate matters I will change the motion to adopt it section by section and then we will clear this up as we go. I will, with the consent of the second withdraw the motion to adopt the report as a whole.

The President: The question before the Convention is, shall Sec. 1 be adopted by the Convention.

This question on reaching a vote, the President declared the result to be as follows: "The ayes have it Sec. 1 is adopted."

The Clerk read Section 2.

Mr. Hole: I will make the same motion as to Section 2.

Which motion prevailed.

Section 3 read by the Clerk.

Mr. Sherwood: I rise to ask an explanation of the words "Within the boundary of the State of South Dakota". It seems to me in that provision, a bond executed any place outside of the State of South Dakota, even by residents of the State, would be entirely null and void.

Mr. Van Buskirk: I have thought of that and suggest that as far as the officer is concerned that it states as to any office therein, —and move that the word "therein" be inserted after the word "officer".

The motion received a second.

Mr. President: It is moved by the gentleman from Codington that the word "therein" be inserted in the eighth line, after the second word of the eighth line. Those of the opinion that the motion prevail say "aye"; those of the contrary opinion say "no".

The ayes have it and Section 3 is amended by inserting the word "therein" after the word "officer."

Question recurring upon the adoption of Section 3, as amended was adopted.

Clerk reads Section 4: All officers, civil and military, now holding their offices and appointments in this Territory under the authority of the United States, or under the authority of the Territory of Dakota, shall continue to hold and exercise their respective offices and appointments until superseded under this Constitution.

Provided; That the provisions of the above sections shall be subject to the provisions of the act of Congress providing for the admission of the State of South Dakota, approved by the President of the United States, on February 22, 1889.

Mr. Hole: I move the adoption of the section just read.

The President: The Chairman of the Committee moves the adoption of Section 4; as many as are of the opinion that the motion prevail, say aye; the ayes have it, Section 4 is adopted.

Mr. Williams: I have one or two amendments prepared concerning this section and before I offer it I wish to suggest verbally an amendment in the second paragraph from the last, after the word "and" in the first line,—

Mr. Hole: That is a mere clerical error in this line and also the last line.

Mr. Williams: I have an amendment which I offer further and I will say that I have a number of amendments to offer to the different sections and they are all fastened together on the same paper. I will read them. I move that the report of the Committee on Schedule and Ordinance be amended as follows: That Section 5 be amended as follows: After the word "State" in the fourth line of the 7th paragraph insert the words "and county" so it will read "for the following State and county officers" and at the end of paragraph 8 of said section add the words "and Clerk of Circuit Court". I move the adoption of the amendments.

Which motion received a second.

The President: It is moved to amend Section 5 by inserting after the word "State" the words "and county" and at the end of paragraph 8 "and clerk of the Circuit Court".

Mr. Williams: That is the question referred to by Mr. Van Buskirk. It is a question upon which members of the Convention

have differed and a question upon which, while differing, we are very desirous it should be settled in accordance with the Constitution and the Omnibus Bill, and what is right and just. Of course this question is confined there in the Omnibus Bill; does it provide by Ordinance for the election of Clerk of the Circuit Court? Those who favor the proposition that we have authority under the Omnibus Bill for the election of Circuit Clerk, base our belief upon two different parts of the Omnibus Bill. Section 9—I will read all of Section 9 so as to get the commencement,—“Sec. 9. That until the next general census, or until otherwise provided by law, said States shall be entitled to one representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the representatives to the fifty-first Congress together with the Governors and other officers provided for in said Constitutions, may be elected on the same day of the election for the ratification and rejection of the Constitutions; and until said State officers are elected and qualified under the provisions of each Constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories.”

Now I take it that that means this: The words “other officers,” that without any stretch of construction, this Convention under that is authorized to provide for the election of every officer of the State and county provided for in this Constitution. And though we do not carry it to that extent, I believe we have that authority; that it is not only the duty and privilege of this Convention, and power, but it is the duty of the Convention to provide for this office; why?

I believe it is generally conceded that the Clerk of the District Court under the present system that we have when the State government comes into existence and the District Court going out of existence that the Clerk will follow and that we will have the office and election of the Judge of Circuit Court as provided for; but there is no provision made for the clerical work of that Court; then we will have a court without any clerk; that is conceded by some as being the condition in which we will find ourselves after we are admitted. Now that being the case in our view it is necessary to fill that office. While this Convention may by ordinance have power to fill it as the Convention of 1885 did by providing that the Clerk will hold over, I think it is very doubtful. The Constitution adopted in 1885 by which we are bound, provides that the Clerk

of the Circuit Court is an elective office. I hold, that being an elective office that the Clerk of the Court must be elected before an appointment can be made to fill a vacancy. Sec. 32 of Art. V of the Constitution reads as follows: "There shall be a Clerk of the Circuit Court in each organized county, who shall also be clerk of the county court and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the court consistent with the provisions of law". Then the Constitution unequivocally provides for that office. We have another section of the Omnibus Bill that is still more sweeping in its terms and expresses this view. Sec. 24 reads as follows: "That the Constitutional Convention may by ordinance provide for the election of officers for a full State government."

For the election of officers for a full state government! We hold further that the phrase "full state government" does not mean the officers usually denominated State officers, only, but officers that will make a state government complete in all its parts. Not only does it say in my judgment entitled by this instrument, but this, including county officers, and other officers that are provided for in this Constitution. I believe that phrase will include all of them. Taking these two sections there is no question but what the power is provided for us to provide for the election of the Clerk of the Court.

Sec. 5 of Article IX of the Sioux Falls Constitution we have the reason for some objections that are raised to the position that I maintain with others. That section reads as follows: "In each organized county at the first general election held after the admission of the State of Dakota into the Union and every two years thereafter there shall be elected a Clerk of the Court, etc. It says at the first general election there shall be elected a Clerk of the Circuit Court. This Constitution, while it provides and defines when and what a general election is, in a certain way, the term general election is used there; there was a definition of the term "general election", in cases of all general elections occurring on even numbered years.

Then under this provision the Clerk of the Circuit Court will be elected in June, 1890. Now how are we to bridge over until

1890? That is a point that is interesting many of us. We want to provide for that office until November, 1890. Looking at the Omnibus Bill we have found in two sections ample authority for this Convention to provide for that. I believe not only that we have authority, but it is our duty to do so and it is generally demanded by the people we represent to provide for this election.

A Voice: Let us hear the section under consideration, read.

The Clerk reads Section 5.

Mr. Van Buskirk: We have with some other members of the Committee reached a somewhat different conclusion with reference to the position which we occupy upon this particular subject. I have supposed that when Congress was dealing with the question that they were taking into consideration what usually in the history of the administration of the law as it had existed in other states would be made to apply here and to that history we may refer for the purpose of determining what offices are referred to here and included within the provisions of the Omnibus Bill. I will call the attention of the members to the Second Article of the Constitution of Dakota, known as the Sioux Falls Constitution. I do this for the purpose of their observing that all state constitutions like ours contain this provision. I do it for the purpose of ascertaining who are state officers in particular.

"The powers of the government of the State are divided into three distinct departments, the Legislative, Executive and Judiciary. And the powers and duties of each are prescribed by this Constitution". Now we will remark that while we have theoretically a State possibly without any difference in the administration of law, practically we have no State government without the election of State officers. And that when they are speaking in the Enabling Act of "State officers," they are referring to officers who fill these different positions necessary to the exercise of the powers of the State government. The government of the State can be exercised by officers filling these particular positions in existence. The members of the Legislature would make the law of the State the courts would determine the meaning and interpretation of them and issue their process and put them into the hands of the Executive Department and they would be executed; and certain of the other officers like the Treasurer, would constitute a branch which would be called the Executive, the Legislature would be the Legislative Department; the Judicial officers would exercise the

Judiciary functions; when you have got those you have got all that is perhaps absolutely necessary to constitute a whole state government. As I have said, I apprehend that when Congress was using the terms which they have used in the Omnibus Bill they were using them in the light of the provision that was contained in this, and which provision is contained in all other constitutions. Now, let us proceed a little further and consider this Omnibus Bill. The Section 9, to which my Brother Williams has referred, "That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the House of Representatives of the United States, except South Dakota, which shall be entitled to two; and the Representatives to the Fifty-first Congress, together with the Governors and other officers provided for in said Constitutions, may be elected on the same day of the election for the ratification or rejection of the Constitutions; and until said State officers are elected and qualified under the provisions of each Constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of their respective offices in each of said Territories."

Now, I suppose by a familiar rule when we speak of other officers, we are referring to a particular class, to-wit: The State officers, among which the Governor is one; that when they state other State officers they refer to that class which immediately precedes, to-wit: The Executive Department of the Government, and do not refer to county officers. And I am further, by that section, inclined to that belief. We find before we conclude that section, "and until said State officers are elected" the Territorial government shall remain.

Taking the first part even without the other, I should arrive at that conclusion; I am confirmed in the belief that that was what was meant from the fact that they state "until the State officers are elected" and qualified, etc. I do not see how, under that, you can rationally reach any other conclusion, but that they are speaking of the governors and Treasurer and Auditor and perhaps the Superintendent of Schools; that those are the officers denominated State officers.

Now, I understand very well in the early legislation of this country we had no difficulty in separating the State from the county officers. If an individual inquires "Who are the State officers. I do not think anybody ever thought of stating they included Mr.

Register of Deeds, or Constable, or Mr. Pathmaster; but he would say the Governor and Treasurer and Judges of the Circuit Court were State officers. Here is another matter stated perhaps in most all of our constitutions; it is found in this one; a provision which says in case of a vacancy the Governor shall appoint all these officers down to the County Judge; the other officers are to be appointed by the Board of County Commissioners. It seems that in our Constitution,—and I assume that Congress drew that line right through there separating the officers of State from the county officers. It seems to me that is what it means. We may proceed to another provision of this Omnibus Bill, which adds force to this conclusion. I read it: "That the Constitutional Convention may by ordinance, provide for the election of officers for full State government including the members of the Legislature and Representatives of the Fifty-first Congress". It seems a little singular to me that if all other officers aside from those that are determined State officers were included within those terms they should have taken so much pains as to have said "including the members of the Legislature". Now that circumstance, using that language forces me to the conclusion that they intended when they spoke of the officers of the State government to have in mind those which I have mentioned, and to have no question about it they say including the members of the Legislature. It seems to me that if they had intended that every officer down to Pathmaster was to be denominated a State officer, they would not have taken pains to have used that language at all. We read a little lower "But that said State government shall remain in abeyance until the States shall be admitted into the Union, as provided in this act".

Now this Legislature, together with another rule which Congress had no doubt in mind, (it seems they had confined themselves to the Constitution of 1885 a great many times) they indicate a provision which reads in this way, that there shall be elected at the first general election after the admission of this State into the Union, county officers, which includes this Clerk of the Circuit Court. I say I assume from the circumstance that they had had this Constitution before them so many times and so long that these provisions were in their minds and before them when they drew this Omnibus Bill; they anticipated or intended that that should be correct and that that should be the result of it and that that was the construction they put upon it from the language used in this

Omnibus Bill that perhaps constitutes the principal legal objection to the introduction of this amendment into the ordinance. It seems to me remarkable that we should stoop in this Convention,—that we should stoop to provide for one solitary county officer as a matter of policy.

It is simply a question of whether or not we have got the power; I take it under the provisions of this bill that these county officers hold over; and the very fact that they say in this Constitution, "Clerk of the Circuit Court"; I cannot think that that has any significance, because if we take what they do in some of the other states, where the courts are denominated "District Courts", just as many of the States instead of taking the term "Circuit Court" continue the original,—in the State of Iowa, they continue the name, "in District Court". The mere circumstance that a Court exercising the same jurisdiction under the Constitution is to be called Circuit Courts here with the same jurisdiction that was exercised under the law previously in existence, to-wit: The District Court and which is the same Court, and which exercises the same jurisdiction succeeds to all the powers and succeeds to all the unfinished business contained therein,—the mere fact that they state this shall be called the Circuit instead of the District Court can have no significance so far as the Clerk being a County officer. I think you will find also that so far as our statute is concerned, it provides for a Clerk of the District Court. We have a statute upon our books passed by the Legislature of the Territory, in which it was considered a county office just as much as the Register of Deeds, and perhaps many of us will remember at the next general election that in many counties of this Territory they went to work and elected Clerk of the District Court. It seems to me that the circumstance that the Legislature of this Territory in the next session after the adoption of the Constitution of 1885, provided for the election of this officer, Clerk of the Court as a county officer, must settle in the mind of every careful citizen the fact that they are not State officers, but simply county officers who hold over under the laws of the Territory.

Mr. Williams: I do not wish to prolong this debate, but I wish to correct an error. He reads Article second of the Constitution in support of his doctrine; I wish to read it: "The powers of the government of the State are divided into three distinct departments,—the Legislative, Executive and Judicial, and the powers

and duties of each are prescribed by this Constitution". He goes on to say the powers of each are distinct and separate. Now the Ordinance does not say that we can provide by ordinance for the election of the officers of each of these departments! It goes on to say the powers of the government are divided into three classes,—three distinct classes,—that is what Article II is; it provides that the powers of government enacted there and exercised by the will of the people is divided into three departments laid down, and in order that these three departments of government, as laid down, may not fail, we will turn to another article. Article V and see what is necessary to complete these three powers of government.

The Judicial powers of the State, except as in this Constitution otherwise provided, shall be vested in the Supreme Court, Circuit Courts, County Courts, and Justices of the Peace, and such other courts as may be created by law for cities and incorporated towns.

According to his own doctrine, in order that the full State government may be filled, we must elect the Justices of the Peace. I want the members of the Convention to think of that, I want to correct another mistake; that is this: The gentleman from Codington said, after the adoption of the Constitution in 1885 that the Legislature went to work and provided for the Clerk of the District Court; my understanding of that is that the Clerk of the District Court was provided by Act of the Legislature prior to that, because I have a distinct recollection that the question came up in 1884 and 1885 and the attempt was made in our town to elect one; and that it was overruled; that it was decided by the bar of this Territory that the Legislature had no power; the point I wish to make is this, that the statute was not passed in pursuance of this Constitution of 1885, but was an act of the Legislature without reference to this.

Mr. Wood of Pennington: I desire to say a few words on this question and for two reasons; I am mistaken in my understanding of the proposition or else the gentleman who resisted the election of the Clerk of Court at a common election was mistaken. This is a matter that we should get right upon, if we can. In the first place the report of the Committee provides in section four, "All officers, civil and military, now holding their offices and appointments in this Territory, under the authority of the United States, or under the authority of the Territory of Dakota, shall continue to

hold and exercise their respective offices and appointments until superseded under this Constitution".

We are told here by the gentleman from Codington that it is the same court; let us see about that. These courts, under the Constitution will be State Courts; there will be no issue raised upon that proposition. Now we take that for granted and I think it is granted that they are State Courts. Hardly the District Courts of the Territory of Dakota; they are Federal Courts, that is with this difference; they have the jurisdiction conferred by our Statute upon the District Courts and in addition to that they have the Jurisdiction of the United States Circuit and District Courts conferred upon them by the United States Circuit and District Courts and they have the jurisdiction of those courts conferred by law.

Will the gentleman contend for one moment, can anyone contend on principle that our Circuit Courts, after we are admitted into the Union, and these Courts are organized, will it be contended that they are the same grade or successor of the District? Why, it is the creation of a different and distinct tribunal and Court! Not the same at all. Every one of these District Courts of the Territory, get their life not from any law of the Territory; I apprehend in the first instance they get their life and authority from the Organic Act. Hence, they are not Territorial Courts in the sense of being merged into State Courts; their Clerks are appointed by the Courts themselves; we have the same provision relative to the Clerks of the Supreme Court and the reporters of the Supreme Court: "There shall be a Clerk and also a Reporter of Supreme Court who shall be appointed by the Judges thereof and who shall hold their office during the pleasure of the Judges". It is not even an elective office. What business have we to provide for other offices not to be superceded by the State government? Is the office of Sheriff to be superseded? Or Coroner or Probate Court? That Court is superseded by the County Court in other words there is a merger into the county courts.

Who will contend that a County Judge is a State officer? We are cited to the Second Article of the Constitution, which defines that departments into which the State government is divided,—the Legislative, Executive and Judiciary. Who will say all Judiciary officers are State officers? I think the gentleman will not contend that a Justice of the Peace is a State officer, yet the Constitution in enumerating the places under the judicial powers,

names the Justice of the Peace as one of them. He is not a State officer in any sense. Where do we hear of a Justice of the Peace being superseded by the State government?

They have been elected, qualified and gone about their business as provided under the laws of the Territory; they are not succeeded; that is, their business is not affected by the terms of the Constitution.

Now, it is plain, one of the first questions that will arise unless we provide for the election of the Clerks of Circuit Court; they are ex-officio Clerks of the County Court. For fear that will not be understood, I refer the Convention to Sec. 32, of Article V, and you will see that they are ex-officio Clerks of the County Court. The section referred to reads as follows: "There shall be a Clerk of the Circuit Court in each organized county, who shall also be Clerk of the County Court, and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the Court consistent with the provisions of law".

The Schedule report has provided for the election of the County Judge; it is contended that he is a State officer. Turning to Section 19 of Article V it reads as follows: "There shall be elected in each organized county a County Judge who shall be Judge of the County Court of said county, whose term of office shall be two years, until otherwise provided by law." What is the Constitution defining in that office? It is a county office. "There shall be elected in each organized county" what? A state officer, to be known and termed County Judge? Not at all! But, in each county shall be elected a county Judge. His office is a County office, known as County Judge. You are to provide for the election of a County Judge, yet you pretend that he is a State officer; whereas the Clerk of his Court, being a Clerk ex-officio, is not a State officer but a county officer--now where do you draw the line?

Mr. Dickinson: "All officers provided for in this Article shall respectively reside in the district, county, precinct, city, or town for which they may be elected or appointed"?

Mr. Wood: Very well. Gentlemen of the Convention; Notaries Public are appointed by the Governor; they are not elected at all; are they considered Territorial officers? I think you will find with the exception of the States of California and Kentucky that the courts hold that they are State officers. A different rule pre-

vails in some of the states they are authorized to perform the duties and functions of that office simply in the county where their certificate of appointment is recorded. They can of course have it recorded in each county in the State, but until so recorded they can only act on the county where it is so recorded. Then the distinction in the appointing power to fill vacancies; the distinction is as to whether the office is a county or a State office. "Vacancies in the elective offices provided for in this Article shall be filled by appointment until the next general election as follows: All Judges of the Supreme, Circuit and County Courts by the County Board of the county where the vacancy occurs; in cases of police magistrates, by the municipality." The Governor is told to fill the vacancy in the County Judge's office by appointment; but does that determine to your satisfaction, and from that reasoning can you say it creates and makes the Judge of the County Court and his Clerk a State officer? If a State officer, why is not his salary paid by the State? We do not find any provision of that kind in the Constitution; whereas the Circuit Court Judges receive their salary from the State. I find this: I think, and I think the majority of the Convention will agree with me that the Judges of the County Courts are county officers and not State officers at all, under this Constitution,—that the Probate Court is superseded or will be superseded by the State government; at least the Committee took that view of the matter that the Clerk of the Circuit Court is ex-officio Clerk of the County Court. The election of these Judges was provided for, but these Judges of these courts are to be provided according to the provisions of this Constitution with a Clerk; he is an officer distinctively of that Court and without we provide for that Clerk, your Court is incomplete isn't it, under the Constitution? Is not that true? I say, unless we provide for the election of the Clerk, having elected your Judges you have not fully provided for the organization of these Courts; and not having fully provided for the organization of these Courts, then they do not, and cannot exist in their entirety as contemplated by the Constitution. They say if we elect the Clerk of the Court we have got to go right down through the list and elect all the other county officers; that is true, if you can show where these officers will be superseded by the State government; but we find on the contrary, they are continued straight through. In fact, these officers are continued not only in power, but in name, as existing under the laws of the Ter-

ritory; the laws of the Territory are continued right forward; nothing superseded excepting those of which it can be said by reason of there being a provision displacing them, under the State Constitution, they are superseded; everything else is continued.

I turn to the office of Sheriff and Register of Deeds, but there is a difference between those and the Clerks of the District Court. That is not an elective office under our law at all; the Legislature passed an act of that kind, or a certain Legislature did attempt to. While that question never went to the Supreme Court of this Territory the question was raised in this very district; the District Court of this District, I think in this county, held that the Legislature had no such power; at any rate the question was determined in some of the counties of South Dakota; we elected a Clerk of the District Court in Pennington County, but by reason of that decision, which we obtained, he never qualified and the old Clerk went on by virtue of his appointment. I think from these various provisions it will appear to the Convention clearly that we should elect all the officers proper to be elected in order to set the State government in full motion under Section 9 of the Omnibus Bill. Commencing with line five of Section 9, "And the Representatives to the Fifty-first Congress, together with the Governors and other officers provided for in said Constitutions (providing for all four States in the act) may be elected on the same day of the election for the ratification or rejection of the Constitutions; and until said State officers are elected and qualified under the provisions of each Constitution and the States, respectively, are admitted into the Union, the Territorial officers shall continue to discharge the duties of the respective offices in each of said Territories". That is they may be elected on that day or they may be elected on some other day, but they must be elected. Some gentlemen may contend that there is an appointing power somewhere. Is there an appointing power for an elective office before that office is filled by an election? There is no such thing known as a vacancy in an elective office until an election has been had unless the law provides that the first incumbent can be appointed; you cannot have such a thing as a vacancy until an election has been had. It will be contended perhaps that this same section has a provision obviating the difficulty "until such State officers are elected". It is contended by reason of that language that our power is confined to State officers

only. It is one of the incomprehensible things how anyone can contend that that is true. Look at the language again.

Mr. Stroupe called to the chair by the President.

Mr. Wood: "And other officers provided for in said Constitution may be elected on the same day of the election for the ratification or rejection of the Constitution". Now, they do not continue the discussion relative to the officers or all of the officers contained in the first provision; they are simply now proceeding to define what shall take place, or what shall be done when the States are admitted, and what shall be true until they are so admitted; they are not limited in any sense, the language is simple and distinct that all officers provided for in the Constitution shall be elected, and we may provide for their election at the coming election. Since we have provided for the election of these Courts it seems to me it will be our duty also to provide for the election of these Clerks because until you provide for the election of these Clerks you cannot organize the Courts; and until the Clerk is elected the appointing power cannot be exercised because no vacancy can exist in an elective office until there has been an election unless the law creating the office provides the first incumbent may be appointed. Then I say, there being no such provision that an incumbent of the office of the Clerk of the Circuit Court can hold by appointment; there must be an election before there is any vacancy in that office. There is no doubt in my mind but what the State government will supersede everything connected with the district court, then you will not have a Clerk of the Court at all; he cannot hold over, he has no authority under the State government, it all comes from the Judge, not through the people and until you elect a Clerk you will have none and I contend there is no appointing power other than the County Commissioners and they are judges themselves. The Circuit Judge might contend that he had the appointing power, the County Judge might contend that ~~he~~ had the appointing power, and so as well, the County Commissioners might contend that they possessed the appointing power. You will have a row in every county in the State; there will be a regular scramble. In some localities they will have a dispute as to the appointing power, then, then if we pass this without providing for the election of the Clerk you will see the magnitude of the error committed; you will see where the criticism will fall and from whom; it will be all the Clerks and everybody everywhere and they will say that the Constitution pro-

vided for the election of the Judge, why didn't it provide for the election of a Clerk as well?

Mr. Sterling: A great deal of the argument has turned upon the necessity of the election of the Clerk of the Circuit Court upon the ground that there will be no person to fill that position and that there is no vacancy that can be filled by an appointment. This position was taken by some of the members of the Judiciary Committee and it was insisted that that being an elective office, no election being first held, the office was, so to speak, not organized. Therefore there was no vacancy that could be filled by an appointment. On the other hand it was contended that the Constitution created the office, that if there was an incumbent in the office there was a vacancy and that there was power to fill that vacancy by appointment under the Constitution. I was somewhat surprised by the position taken by some of the members of the Committee in that respect. I took a little occasion during our adjournment to look up upon that point and as to whether there was any peculiar meaning to that word vacancy, in this connection, which would render such an important office as this vacant, because there was no election under the Constitution. In Dillion on Municipal Corporations, Sec. 161 it is said (I am just reading from pencil notes; I will refer later to the decision that is referred to in this case). In this case it is said that a resignation takes effect and vacates for all time. "There is no technical nor peculiar meaning to the word vacant, it means empty, unoccupied; as applied to an office without an incumbent. There is no basis for the distinction urged that it applies only to an office vacated by death, resignation or otherwise. An existing office without an incumbent is vacant whether it be new or an old one. A new house is as vacant as one tenanted for a year which was abandoned yesterday. We must take the words in their usual plain sense". I am reading from the case of Stocking vs. the State, found in the 7th Indiana, page 326. I have examined the case since we have convened, since recess today. It was a case where a party was indicted for murder and in a district which had been newly created. It provided for the electing of the Judge of that district. There was a failure to elect; there was a failure to even attempt an election of Judge and under the appointing power given, the Governor of the State comes in and fills the vacancy in that office. The Judge was appointed, the man was tried, these questions were raised upon the trial of the party

for murder. This is word for word from a decision that was rendered from the Supreme Court of the State of Indiana, and there is an Indiana case following this which is precisely similar. A case where election was provided by General Assembly. The General Assembly did not elect, the Governor filled the office by appointment. Now, is there any right to fill this office of Circuit Clerk by appointment? I say that there can be no question absolutely but what there is a vacancy. Sec. 37, of Article V, provides: "All officers provided for in this Article shall respectively reside in the district, county, precinct, city, or town for which they may be elected or appointed. Vacancies in the elective offices provided for in this Article shall be filled by appointment until the next general election, as follows: All Judges of the Supreme, Circuit and County Courts by the Governor. All other judicial and county officers by the County Board of the county where the vacancy occurs; in case of Police Magistrates, by the municipality." There is other authority for the election of the County Judge at this particular time than is found in Section 37. It is said because this officer is appointed by the Governor that he is a State officer, that as the Omnibus Bill authorizes the election of State officers, that the County Judge being a State officer may be elected now. Section 26, of the same Article V, provides that the Judges of the Supreme Court, County Court and Circuit Courts shall be chosen at the first election held under the provisions of this Constitution. So I contend that the makers of this Constitution plainly contemplated the election of the County Judges as well as the Supreme and Circuit Judges at the first election held under the provisions of this Constitution. Now, gentlemen say that because we are authorized under the Omnibus Bill to elect, what? Not all the officers as the gentleman said, provided in the Constitution, that is not in the Omnibus Bill respect of all officers necessary for a full State government. Now when they made this Constitution and provided for the election of officers at particular times the makers of the Constitution knew, and I do not believe Congress intended to indicate with any uncertain tone what they knew. They knew all officers would be necessary to carry on State government; they had in mind that if there was a vacancy in this office of County Judge that it would be filled by the Board of county Commissioners; they provided all the other county officers should be elected when? Not under the provisions of the Constitution when they got a case in the Courts, but at the first general election held

after the admission of the State into the Union. These different county officers should be elected. So I think, Mr. Chairman, that there is in the first place under this Constitution, no authority for the election of the Circuit Clerk, we have no warrant for it and I think in the second place that there is no necessity for it.

Mr. Jolley: So far as the Omnibus Bill is concerned I do not think that Mr. Springer or anyone else who had that measure under consideration got so far down in elective officers as to provide for the election of county officers. All that they did provide for was the State officers. So far as the argument made by the gentleman from Pennington is concerned, while very ingenious and presented in a very able manner, falls flat. His premises are not correct. There is now, and will be until we are admitted under this Constitution, if we are admitted under it, a provision by which the Clerks of Court can be appointed in the several counties in this Territory by Judges of the District Court. They are now, they will remain there until we are admitted as the State of South Dakota under this Constitution, that is the District Courts of the Territory of Dakota. And just as soon as we are admitted under this Constitution, if we are admitted, the provisions for these changes under the provisions of the Constitution are amply full and complete as to what course shall be with reference to the office of Clerk of the Court and there is no doubt, not any ambiguity as to how that officer shall be appointed and what his powers are. Sec. 32 read: "There shall be a Clerk of the Circuit Court in each organized county, who shall also be Clerk of the County Court, and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the Court consistent with the provisions of law." Under this Constitution we are attempting to thrust the provisions in Sec. 32 that there shall be a Clerk of the District Court that shall be elected by law. If the position taken by the gentleman from Pennington is tenable then you have here a rule by which you can deceive the will of the people and do great injustice as long as you see fit to do so. Why? It is soberly contended that before there is a vacancy in any office created by law, there must be an incumbent to fill that office. Taking that rule, where are we? Suppose at

the next general election we had elected a gentleman as Governor of this Territory before the State is admitted. This Governor dies, there is no vacancy in that office and it can not be filled, according to the proposition laid down by the gentleman from Pennington, before that Governor has been sworn in, that then there becomes a vacancy and then can it be filled. It must necessarily be a vacancy, his office is created, at the same time the duties; there is a vacancy in that office; that is law. To show what the intention of the framers of this Constitution was, Sec. 5 of Art. IX reads: "In each organized county, at the first election held after the admission of the State of Dakota into the Union, and every two years thereafter, there shall be elected a Clerk of the Court, Sheriff, County Auditor, Register of Deeds, Treasurer, States Attorney, Surveyor, Coroner, and Superintendent of Schools, whose term of office, respectively shall be two years, and except the Clerk of the Court, no person shall be eligible for more than four years in succession to any of the above named offices. This Constitution by Sec. 32 says, Art. V says: "There shall be a Clerk of the Circuit Court in every organized county, who shall also be Clerk of the County Court, and who shall be elected by the qualified electors of such county. The duties and compensation of said Clerk shall be as provided by law and regulated by the rules of the Court consistent with the provisions of law." Sec. 5, Art. 9, says that we shall not elect the Clerk until the first election after we are admitted as a State under this Constitution. Sec. 37 says, as read, that where there is a vacancy in the county offices that that office shall be filled by the County Commissioners. What can be more plain, clear and distinct than that? That there must be, just as quick as we are admitted, the office of the Clerk of the Circuit Court and we are prohibited by this Constitution from electing a Clerk of the Circuit Court until the first election after we are admitted, into the Union. That instead of making these acts conflict by electing a clerk of the Court would but just add to the complication. There is no court in Christendom could take that to be the law, plain in its details in the

place of an act which would fly in the teeth and eyes of this Constitution, and against the rules laid down by it. No sir, the Constitution says there shall be a Clerk of the Court and the Constitution says we cannot elect that Clerk of the Court until the general election after we are admitted into the Union under this Constitution. And the Constitution further says that where there is a vacancy in the county offices it shall be filled by the Board of County Commissioners and that is all it says. It is plain and clear.

Mr. Sherwood: I desire to add one or two points to those of the gentleman from Pennington; I think that we have a right to elect a Clerk of the Court. I apprehend that the only question at issue here is the question of power. I do not think there will be any doubt among the majority of this Convention as to the expediency or necessity of it. I desire to call attention to the remarks of the gentleman from Spink in the case which he read. In relation to election under the Constitution, I desire to say that the election on the 1st day of October next is not under this Constitution. When the Constitution of 1885 was adopted, all the powers granted were the powers granted under this Constitution. Today we stand in a different position. The powers we are moving under are the powers that emanate from Congress. Referring to Article 24 of said Omnibus Bill does it not provide in terms that all officers provided for under said Constitution might be elected? I desire to read a portion of Sec. 9: "Representatives to the Fifty-first Congress together with Governors and other officers provided for in this Constitution." Now, in so many words it says "All other officers provided for in this Constitution". Either those words mean nothing or they mean something. "The other officers." No one will contend for a moment but what the Clerk of the Court is one of the other officers, provided for under this Constitution, expressly is designated as one of the officers provided for under this Constitution. Now I say that these words mean something or they mean nothing. I desire to say further that the power to elect these various officers carries with it the power to provide for their election; that is the common rule in relation to the interpretation of statutes.

That must not be interpreted as follows: The intent of the statutes indicated by the framers of it must be taken into consideration so, if possible, to give a meaning to all portions of the statute. Now, to give it the interpretation that has been given it here today wipes out Sec. 9 and leaves Sec. 24 intact. Interpreted as we interpret it blends Secs. 9 and 24 and gives power to elect all of the State officers.

Mr. Sterling: I stand corrected as to the words of the Omnibus Bill. I contend that that subject, the election of officers provided for under this State Constitution must be construed in reference to the Constitution itself at the times of the election provided for in the Constitution and that by instructing this Convention to resubmit this Constitution to the people they said, or expressed the meaning that the Clerks of the Court shall not be elected.

(Calls of question from all over the house.)

Mr. Willis: I am beginning to conclude that we who are not lawyers cannot stand much more information on this subject. I am about the opinion of the old lady, that she believed the Scriptures would still throw some light on this subject; I shall begin to make a speech probably myself, if this continues.

(Calls of question.)

Mr. President: The question is upon the amendment of Mr. Woods, of Pennington.

Mr. Sherwood: I call for the reading of the amendment.

Mr. Williams: I will read it: "That Section 5 be amended after the word 'State' in the fourth line of the 7th paragraph by inserting the words 'and county' and at the end of paragraph 8 of Section 5, add the words 'and Clerk of Circuit Court.'"

The question on the amendment reaching a vote resulted as follows: Ayes 22; nays 39. The motion was declared lost, by the President, the following gentlemen voting aye: Messrs. Atkinson, Boucher, Clough, Cook, Davies, Fowles Goddard, Hall, Henninger, Huntley, Humphrey, Matson, McFarland, O'Brien, Peck, Sherwood, Smith, Spooner, Williams, Wood of Pennington, Zitka, and Mr. President. 22. And the following gentlemen voting nay Anderson, Berdahl, Beuchler, Coats, Cooper, Corson, Couchman, Craig, Dickinson, Diefendorf, Downing, Eddy, Edgerton of Yankton, Fellows, Gifford, Hartley, Hole, Houlton, Jolley, Kimball, Lee, Lyons, Ramsey, Ringsrud, Scollard, Stoddard, Sterling, Stroupe,

Thompson, Van Buskirk, Van Eps, Van Tassel, Wescott, Wheeler, Whitlock, Willis, Williamson, Wood of Spink, Young. 39.

Mr. President: The question now stands upon the adoption of Section 5.

Mr. Humphrey: I would call attention to the last two paragraphs of the section, the last two paragraphs but one, the paragraph beginning "if it shall appear". The last clause of that paragraph, the last clause of the next, it seems to me, that they are superfluous. I would not move that they be expunged, but I call attention of the Chairman of the Committee and if he thinks they are necessary there I do not object absolutely.

The Chairman: The motion is upon the adoption of Sec. 5. As many as are in favor will say aye. The ayes seem to have it; the ayes have it. Section 5 is adopted. The Clerk reads Sec. 6 as follows:

Sec. 6. At the same time and places of election, there shall be held by said qualified electors an election for the place of temporary seat of government.

On each ballot, and on the same ballot, on which are the matters voted for or against, as hereinbefore provided, shall be written or printed the words, "For temporary seat of government."

(Here insert the name of the city, town or place to be voted for.)

And upon the canvass and return of the vote, made and as hereinafter provided for, the name of the city, town or place, which shall have received the largest number of votes for said temporary seat of government, shall be declared by the Governor, Chief Justice and Secretary of the Territory of Dakota, or by any two of them at the same time that they shall canvass the vote for or against the Constitution, together with the whole number of votes cast for each city, town or place, and the officers, above named, shall immediately after the result of said election shall have been ascertained, issue a proclamation directing the Legislature elected at said election, to assemble at the said city, town, or place so selected, on the day fixed by this Schedule and Ordinance.

Mr. Hole: I move the adoption of Section 6, as read.

This motion received a second.

The President: The question is upon the adoption of Sec. 6. As many as are of the opinion that the motion prevail, say aye. The ayes have it; Section 6 is adopted.

The Clerk reads Section 7.

Section 7. The election provided for herein shall be under the provisions of the Constitution herewith submitted, and shall be conducted, in all respects, as elections are conducted under the general laws of the Territory of Dakota, except as herein provided. No mere technicalities or informalities, in the manner or form of election, or neglect of any officer to perform his duty with regard thereto, shall be deemed to vitiate or avoid the same, it being the true intent and object of this ordinance to ascertain and give effect to the true will of the people of the State of South Dakota, as expressed by their votes at the polls.

Mr. Peck: I ask the Clerk to read my motion which he has possession of.

The Clerk reads: "That Section 7 of the report of the Committee on Schedule and Ordinance be stricken out and the following be inserted in lieu therefore:

RULES REGULATING THE ELECTION TO BE HELD UNDER THE AUTHORITY OF THE ENABLING ACT FOR THE ADOPTION OR REJECTION OF THE CONSTITUTION AND THE ARTICLES SEPARATELY SUBMITTED THEREWITH AND THE REPRESENTATIVES IN CONGRESS; ALSO STATE AND JUDICIAL OFFICERS FOR SOUTH DAKOTA.

SECTION 1. That at the election to be held on the first day of October, 1889, the election laws now in force in the Territory of Dakota shall apply to and govern such election except as herein-after specially provided.

SEC. 2. Nominations for State officers, Representatives in Congress and Judges of the Supreme Court shall be made by any State Convention and certified to by the Chairman and Secretary of such Convention, according to form number one (1) hereinafter provided, or by any three hundred (300) legal voters in South Dakota attaching their names to a paper nominating candidates and filing the same with the Territorial Secretary.

SEC. 3. Nominations for members of the State Legislature, Judges of the Circuit Court and Judges of the County Courts, shall be made by any Convention held in legislative and judicial districts or county for which any such officer is to be elected, and certified to by the Chairman and Secretary, according to form No. 2 hereinafter prescribed, or by anyone hundred legal voters of any legislative or judicial district or county, by attaching their names to a paper nominating such officers, and filing the same with the County Clerk or County Auditor to which such nominations refer.

SEC. 4. All certificates of nominations and nominating papers provided for in Section two (2) shall be filed with the Territorial Secretary by the fifteenth day of September, and all those provided

for in Section three (3) shall be filed with the County Clerk or County Auditor by the twentieth day of September, 1889, and no certificate of nomination or nominating papers shall be acted upon except accompanied with the consent in writing of the persons or persons therein nominated, provided that in case of death or resignation, the authority making such nomination shall be permitted to fill such vacancy by a new nomination.

SEC. 5. The Territorial Secretary, on the receipt by him of the nominating papers hereinbefore mentioned, shall forthwith transmit true copies of the same to the County Clerks or County Auditors of the several counties in South Dakota.

Sec. 6. The County Clerk or County Auditor shall, after the expiration of the time for receiving the nominating papers, forthwith cause to be printed such a number of ballot papers as will be sufficient for the purpose of the election and the number necessary for each polling place shall be bound or stitched in a book of convenient form, and the County Clerk or County Auditor shall cause to be printed in English, in large type, on cards, instructions for the guidance of voters in preparing their ballot paper; such clerk or auditor shall furnish ten copies of such instructions to the Judges of each election precinct, and said Judges shall cause them to be posted both inside and outside of the polling place, and said County Clerk or County Auditor shall as provided by law, cause to be delivered to the proper judges of election the ballot box and all poll books and returns now by law required or by this ordinance required to conduct and complete the election, also the ballot papers, at least two (2) days before polling the vote; and shall cause to be published in each newspaper in the county a true copy of the ballot paper and card of instructions, said publication to be in the last issue of said papers before the day of voting.

SEC. 7. Every ballot paper shall contain the names of all candidates for Representatives in Congress, State and Judicial officers, and members of the Legislature, and the name of the political party to which each candidate belongs; also the form of ballot for the adoption or rejection of the Constitution and the Articles separately submitted therewith as provided in this ordinance.

SEC. 8. Each polling place shall be furnished with a sufficient number of compartments, in which the voter, screened from observation, shall mark his ballot paper, and a guard rail so constructed that only persons within such rail can approach within ten (10) feet of the ballot box, and it shall be the duty of the judges of election in each polling place to see that a sufficient number of such places be provided and shall appoint a person to guard the entrance to such compartments and he shall be paid the same as the judges of election.

SEC. 9. The voters being admitted one at a time for each compartment where the poll is held shall declare his name, and when per-

mitted by the judges to vote his name shall be entered on the voter's list, and he shall receive from one of the judges of election a ballot paper on the back of which the initials of one of the judges of election shall be so placed that when the ballot paper is folded they can be seen without opening it, and the judges of election shall instruct him how to mark his ballot paper.

SEC. 10. The voter, on receiving his ballot paper, shall forthwith proceed to one of the compartments of the polling station and there without undue delay, not exceeding five minutes, mark his ballot paper by putting a cross (X) in the space to the right-hand side of the name of the person for whom he desires to vote and if he desires to vote for any person whose name is not on his ballot paper he may write or paste on his ballot paper the name of the person for whom he desires to vote, and shall then fold up his ballot paper so that the initials on the back can be seen without opening, and hand it to one of the judges, who shall, without opening it ascertain that the initials are on it, and that it is the same ballot paper given to the voter, and shall then place it in the ballot box and the voter shall quit the polling compartment as soon as his ballot paper has been put in the ballot box.

SEC. 11. The judges of election, on the application of any voter who is unable to vote in any manner provided, shall assist such voter by marking his ballot paper in the manner desired by such voter in the presence of the persons permitted to be in the compartment occupied by the judges and no others, and shall place such ballot paper in the ballot box, and when the judges of election shall not understand the language spoken by the voters claiming to vote, they shall swear an interpreter, who shall be the means of communication between them and the voter with reference to all matters required to enable such voter to vote.

SEC. 12. A voter who has inadvertently dealt with the ballot paper given him in such a manner that it cannot be conveniently used, may, on delivering the same to the judges obtain another ballot paper in place of that so delivered up.

SEC. 13. Any voter refusing to take the oath or affirmation of qualification as required by law, when requested so to do, shall not receive a ballot paper or be permitted to vote.

SEC. 14. No person shall be allowed to take his ballot paper out of the polling place, nor, except as in case provided for by Section Eleven (11), to show it when marked to any person so as to allow the name of the candidate for whom he has voted to be known, and any voter who violates or refuses to comply with this ordinance shall not be permitted to vote.

SEC. 15. In addition to the judges and clerks of election one watcher at each polling precinct for each political party presenting a candidate or candidates for the suffrage of the voters and no other person shall be permitted in the compartment occupied by the judges on election day, and such judges, clerks and watchers shall,

before entering upon thier respective duties take and subscribe to the following oath or affirmation:

I, John Jones, do solemnly swear (or affirm) that I will keep secret the names of candidates for whom any voter may have marked his ballot paper in my presence at this election, so help me God.

SIGNED:

Sworn or affirmed before me at this first day of October, 1889. J. J.

Justice of the Peace or Judge of Election.

SEC. 16. Immediately on the close of the poll the judges in the presence of the clerks of election and such of the watchers and voters as desire to be present, shall open the ballot box and proceed to count the number of votes for each candidate; in doing so, they shall reject all ballot papers which have not been supplied by them as judges of election, all ballots by which more candidates have been voted for than there are officers to be elected; also those upon which there is any writing or mark by which the voter can be identified; all the ballots voted and counted, and those rejected, those spoiled, and those unused, shall be put into separate envelopes and all these parcels shall be endorsed so as to indicate their contents, and be placed in the ballot box and a return of the result of the election at the polling precinct shall be made to the County Clerk or the County Auditor, as now required by law for the election of members of the Territorial Legislature.

SEC. 17. All expense incurred under these rules to be a charge against the county and audited and paid as other claims against the county.

Mr. Hole: I think that that does not provide for things that we must provide for. I think if that is added to Section 7 there will be no conflict. This was made up with a view of and expecting that that would be attached, but if you make that take the place of Section 7 it does not provide for what we must provide for, but if you make that as an amendment to it then it comes before the Convention in a way that it can be discussed intelligently.

Mr. Peck: I have no choice whether it is added to the end of Section 7 or takes the place of Section 7, no particular choice as long as it goes through.

The President: Do you make this as an amendment to be added to Section 7? Or is it a substitute?

Mr. Peck: If it be thought desirable to retain Section 7, I do not care about informalities and have no objection that it be added to Section 7 as an amendment.

Mr. Scollard: I move it be laid on the table.

Mr. Jolley: Oh, no!

Mr. Hole: I have no right on the floor but to consider this matter in the Committee Conference. This is a question upon which we all can honestly differ and I ask as a favor, and I think I express the wish of every one of the Executive Committee that that motion might be withdrawn.

Mr. Scollard: I think, Sir, that this Committee is entitled to as much courtesy as any other that has been appointed by the President of the Convention and this matter came up before the Committee and was voted down unanimously.

(Voices of No, No No.)

Mr. Scollard: You will have the floor after I get through, if you please. I think, as a matter of right, that this matter ought to be laid on the table. It don't belong to this Committee after it was voted down. I therefore submit it to the Convention again, that this amendment should be tabled.

The Chairman: It has been moved and seconded to lay the amendment on the table.

(Calls for ayes and noes.)

The President: Those who are in favor of laying the amendment upon the table will vote aye; those opposed vote no.

The ballot resulted as follows:

Those voting aye: Messrs. Buechler and Scollard. (2).

Those voting nay: Messrs. Anderson, Atkinson, Berdahl, Boucher, Clough, Coats, Cook, Corson, Couchman, Craig, Davies, Dickinson, Diefendorf, Downing, Eddy, Edgerton of Yankton, Fellows, Fowles, Gifford, Goddard, Hall, Hartley, Henninger, Hole, Houlton, Huntly, Humphrey, Jolley, Kimball, Lee, Lyons, Matson, McFarland, O'Brien, Peck, Ramsey, Ringsrud, Sherwood, Smith Spooner, Stoddard, Sterling, Stroupe, Thompson, Van Buskirk, Van Eps, Van Tassel, Wescott, Wheeler, Whitlock, Willis, Williams, Williamson, Wood of Spink, Young, Zitka and Mr. President. (57).

The President announced the result of the ballot, two voting aye, and fifty-seven voting nay.

Mr. Peck: I move that Section 7 of the report of the Committee on Schedule and Ordinance be amended by adding the following thereto, that the amendment last read by the Clerk be added as a paragraph to Sec. No. 7.

Mr. Hole: I do not wish to discuss this question more than just to say that it was decidedly the understanding and expectation in the Committee that this should come before this Convention. I think it is fair that this should be considered as an original ques-

tion here without being prejudiced in any manner by any action that the Committee may have taken.

Mr. Van Buskirk: I don't know at this present time the effect of adding this as a section. I would like to call attention at this time so that it would not control some future additions that I would make to it.

Mr. Hole: Would you allow me one suggestion? Why not just number this Section 7 a sub-section?

Mr. Van Buskirk: I will call the attention of the Convention to a few suggestions which have been overlooked. For instance, Sec. 2. Nominating State officers, Representatives in Congress, and Judges of the Supreme Court shall be made by any State Convention and certified to by the Chairman and Secretary of such Convention. After this word Convention" I would insert the word "substantially" so that it would not stand to be a technicality, and every member of the Committee that I have had an opportunity to confer with they conceded that it would be proper. We read a little further "Or by any three hundred legal voters in South Dakota attaching their names to a paper". Now, there might be three or four of them circulated with the same proposition. I would say "paper or papers"; it seems that that ought to go in. Then passing from that down to Section 3, nominations for members of the State Legislature, Judges and Clerks of the Circuit Court. I would suggest to strike that out.

Mr. Peck: Yes, Sir. Exactly.

Mr. Van Buskirk: We look a little further down—I would insert the word "substantially" and following, in the third line from the bottom, where they say "paper" I would say "papers." In view of the fact that the election comes on the first day of October, the inquiry arises in my mind whether that would be time enough for the Secretary of the Territory to get those returns that would come to him to be sent back, counted.

Mr. Peck: I simply put it there that we might note it; they can fix it as they see fit.

Mr. Van Buskirk: Passing that I would desire to suggest in view of the legislation that will take place in other localities upon that subject, I don't know whether that would be a subject for this Convention to investigate, the Judges and Clerks of Courts shall be chosen from the district political parties, they are of course provided for

Mr. Peck: Allow me to make one little suggestion. What I think the point that this measure desired was simply this,—

(Calls from different parts of the house of "louder".

Mr. Peck: What we desire to get a vote upon the principal and consider section by section until after we take the vote upon the principal. I think the wish of the friends of it is to secure the best system of voting that we can possibly get.

The President: Your amendment as made if carried would accept the whole measure.

Mr. Peck: It becomes a part of the report and then will be subject to revision just as the other sections of the report are,—subject to revision afterwards, to strike it out or modify it.

Mr. Hole: As I take it, under the Constitution, the adoption of this would make it permanent and would make this law and part of the Schedule absolutely. We have already adopted or made law, as far as in this Convention lies the power, all the sections down to and including Sec. 6. We now have before us Section 7. It is moved as an amendment to Sec. 7; that amendment is carried; then on motion adopting the section it would then be just as much a part of the Schedule as any other section of it. It looks to me if we urge this question only to get an idea of the feeling of the Convention. If this is only to feel of the temper of the Convention upon this subject that the matter might be brought forward by resolution. But in this we are making law,—we are making law when we vote upon this and we cannot afford to vote blindly. While I may be in favor of some things, I may not be in favor of others.

Mr. Dickinson: I do not agree with Mr. Hole, and I do not understand it as he does. I understand that this is an amendment to Sec. 7 in passing upon an amendment that it becomes a part of Sec. 7. We do not thereby adopt Section 7, we can re-commit or assign to a special committee or re-commit it to the Schedule Committee or take it in Committee of the Whole. I would not vote for it unless it were to pass under careful review and inspection, being careful to make it harmonize with other portions of the Schedule.

Mr. Jolley: What is the question before the Convention?

The President: The adoption of the amendment to Section 7, presented by Mr. Peck.

Mr. Jolley: Then it is to take the place of Section 7. Mr. President, at last, after two weeks of wrangling on this section, we

see ourselves at the threshold of having passed the finest Schedule that ever was passed by a constitutional convention, or we are to the threshold of having it mangled so that its parents won't know it. I had supposed, Sir, that from the time that this Convention had been in session up to the present time, judging from the acts of this Convention and from the manner business has been conducted that we could get on through as we had begun, careful, prudent men, trying to keep ourselves in the boundary, in the formation of our Constitution, within the powers granted to us by the Omnibus Bill. The Schedule as reported by the Committee this morning governed everything that is necessary, comes right up the line allowed us by the Omnibus Bill. But when that line is passed the danger comes. It may be a gratification to the personal interests of some delegates upon the floor of this Convention to be recognized by pressing such an amendment as this, without judging of the result and effect that it will have upon the State of South Dakota. It may be that some delegate here feels determined to abandon that straight course that has been our line of conduct up to the present time and that they will put this Constitution with a Schedule with an amendment upon it in a position where it will be in very great danger of being wrecked. Among all the positions it has been my portion to be connected with in this world, I never was connected with a position, and never had a duty to perform that was so difficult, so trying and in which more care had to be exercised than drawing a Constitution passed by the people to be amended under this Enabling Act, and it may be out of this thought that we will cease to be a Territory in a short time, and the joy that South Dakota will soon be admitted into statehood and that the star of South Dakota will soon be placed upon the national colors, has effected our good judgment. This I believe, could be carefully looked into, for, Sir, if there is any doubt in the mind of a single delegate in this Convention I cannot conceive the reason or theory that he has; I cannot conceive of the line of logic that he pursues. I cannot see what construction he gives the words if there is any question of that kind in the minds of any delegate here as to whether we have the power to make this amendment or not. We have a full, free, open and clear course to pursue, but we must be careful that we do not deviate from that course. Why Sir, this bill here is a general law, relating to the whole election as provided for in the Schedule relating to State officers. It relates also to the votes for

and against the rejection of the Constitution that we will put before the people and for the amendment thereto. No, Sir, I undertake to say without fear of successful contradiction, that there is no power given us any place in this Omnibus Bill; there is not a word, syllable, section, chapter or article from beginning to end which gives us any right to tamper or interfere in any manner with the election laws as laid down in the Territory of Dakota in any respect except upon the question of the adoption and rejection of the Constitution we will put before the people. The Omnibus Bill says: "And all persons resident in the said proposed State who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said Conventions may prescribe, not in conflict with this act, upon the ratification or rejection of the Constitution." Now, Sir, I say under that language that that is all the language of this Omnibus Bill that relates to what we shall provide as rules and regulations for the election of State officers, not the election of the several persons that is attached. But the rule is strict; the law must be enforced exactly as it is; only that and nothing more. You can provide no rule and regulation that refers to the election of State officers; may provide rules and regulations for the election upon the question of the rejection or ratification of the Constitution, but you cannot go a single ell further; you are barred and can proceed no further. Why, Sir, this is a very serious question; it may result in this Convention of raising the question of its powers, it is frequent in courts that we raise the question of its jurisdiction. When we come before the people with our work; when the excitement of the present time is passed and gone; when we sit down in our homes and consider and look over this question as the people whom we represent are now looking at it; when we come to such things as it is we will realize that we have gone beyond the powers granted to us. Then will come the reaction and regret. Why, Sir, we cannot arrogate to ourselves any powers except what is given in the Omnibus Bill and it says what shall be done. I read from Section 8 to show that the President himself, has the right if we do not comply with the provisions of the Omnibus Bill, no matter how large a ballot has been cast in favor of this Constitution, no matter how good or bad the officers may be that are elected, if we deviate from the prescribed rule that is given us by act of Congress, then the President has the right to consider whether we will

be admitted under that Constitution as adopted, then or not. I read from Section 8: "And if the Constitutions and governments of said proposed States are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation on announcing the result of the election in each, and thereupon the proposed States which have adopted Constitutions and formed State governments as herein provided shall be deemed admitted by Congress into the Union under and by virtue of this act on an equal footing with the original States from and after the date of said proclamation." We are not only to have a republican State in form but all the provisions of this Omnibus Bill have to be complied with. So much for our power. Mr. President, this act, as we all know, was approved by the President of the United States on the 22nd of February, 1889. It is said that all persons resident in these proposed States who are qualified voters as herein provided shall be entitled to vote. Now, Sir, if there is any deviation of a single jot or tittle of the law, complications made to enter into it or any embarrassing cause by which a single voter thereby is deprived of his vote for or against this Constitution, then you have gone further than you are empowered to do and you cannot pass that Constitution because you have so deprived a voter of his privilege. The President will say, if he assumes the right, that we have not complied with the plain instructions, that the provisions of the Enabling Act have been ignored. Sec. 14 of the proposed amendment reads as follows: "No person shall be allowed to take his ballot paper out of the polling place, nor, except as in the case provided for by Sec. Eleven (11), to show it when marked to any person so as to allow the name of the candidate for whom he has voted to be known, and any voter who violates or refuses to comply with this ordinance shall not be permitted to vote." Here you go to work into a lot by the Omnibus Bill in so many words to vote for the ratification or rejection of the Constitution; here you pass a rule that a man shall not be allowed to vote for State officers and the Constitution, or its ratification or rejection and if he does not comply with the rules that he is to have his vote rejected and is thus disfranchised. Whoever heard of any such thing as that? We have no power given us for this; we are formed for one express purpose; we are here to amend the Constitution in compliance with the prescribed limitations of the Omnibus Bill, to make such amendments

as the Enabling Act allow; nothing more or less. And if there is any part of that Omnibus Bill, a single line or sentence by which any Legislative power is granted to the people of this Territory, I would like to have it pointed out. Have you the right to pass this amendment? Why, Sir, a bill before our Legislature has to be read three times before each house and must be passed by each house and then go before the Executive of the Territory, who has the right to veto it. How do we stand here in this Constitutional Convention; does the mere act of our voting this make it a law? Have we any power that makes this law? We go to work and pass this Constitution voting for it, signing it, and enrolling it and forwarding it to the place and custodianship of the officer provided by law. Does that make a Constitution? No Sir, that never makes a Constitution. You not only have to do that but you have to go before the people first and they by majority vote have to ratify what you do here. Let us not forget that this Constitution is an inanimate thing until vivified by an endorsement by popular vote. You are bringing forth a creature in which the breath of life cannot be instilled until our acts are done, and you on this floor arrogate to yourselves to tell a man if he does not comply with that section he must be disfranchised and his vote cannot be counted. Not only must the people of this Territory breath life into this Constitution; it goes further than that, and a majority vote only creates life. If the President of the United States hears you have not complied in every respect with the Omnibus Bill and he puts a veto upon it, then life is squelched out of it. Until Congress admits us into the relations of the United States then here is this body without any power to create any interest in or give any force to this Constitution which you adopt. It is forward to assume that power that says, this man unless he complies with this law contemplated in this amendment he shall be disfranchised; shall not be allowed to vote, in clear violation of the written law of the Territory of Dakota.

SEC. 16. Immediately on the close of the poll the judges in the presence of the clerks of election and such of the watchers and voters as desire to be present, shall open the ballot box and proceed to count the number of votes for each candidate. In doing so they shall reject all ballot papers which have not been supplied by them as judges of said election, all ballots by which more candidates have been voted for than there are officers to be elected; also those upon which there is any writing or mark by which the voter can be iden-

tified. All ballots voted and counted and those rejected, those spoiled and those unused, shall be put into separate envelopes and all these parcels shall be endorsed so as to indicate their contents, and be placed in the ballot box and a return of the result of the election at the polling precinct shall be made to the County Clerk or County Auditor, as now required by law for the election of members of the Territorial Legislature. There is a provision, Sir, that clearly violates the laws of the Territory. We come here to adopt a Constitution and arrogate to ourselves the right to change fundamental law of the land and say that the votes cannot be counted. Sir, you are stepping upon the brink of an abyss in attempting any such power as that. You disfranchise the people of this Territory and who wants to take that responsibility? I do not want that in mine; to disfranchise them or dictate the manner in which they shall vote. It is attempting what is in clear violation of the law. That is base libel upon the reputation of your people to assume that you have been elected for that purpose or to assume to yourself the right to put into the Schedule something that disfranches any voter of the Territory of Dakota. Why, Sir, it is not two months from now until the election comes. You will start a revolution that has not been equaled. If at the time of the election you tell the people they must do these things or be disfranchised. Let us tell the Czar of Russia to come here and by his edict say that the people shall not vote till they vote as he tells them to. There is no punishment that can be inflicted for violation of the law, I do not care on what ground or section you put it, no court under Heaven that would hold an indictment found under that valid for a single instance. Here you disfranchise a man,—for what? For something that is trifling, because he goes to work and he shows his vote, shows how he scratched his ballot; let a man see how he votes; for that act, that may be done as innocently as any act can be done by the purest person in the world, and for that act you take away his manhood; for that you rob him of his personal rights of American citizenship; for that act you put him in a position where he has no right to say how he shall be governed. Why, Sir, this question is an appalling one; this question is one that I approach with a great deal of dread. I do not suppose, Sir, that anything that I can say will change the result in this Convention. We have heard upon the streets, no word can stop this act; no reason can stay this crime and if that is the result I do not care

how this has been brought about; I do not care who is the perpetrator of this act, I want it, when this act is done, when this act is passed upon by the people and we have adjourned to our homes and neighbors and are confronted with our work in this Convention, that when they say anything to me or about me they cannot say I did it. Then, Sir, here is the question we are called to vote upon now; we are to pass an act which we cannot by any penalty under Heaven enforce. You arrogate to yourselves the right to disfranchise American citizens,—something un-American and unknown. You are to convict a man of crime, unheard by a jury and without being tried by a jury of his peers. You say that these judges of election, two or three of them, have the power to say to this man if he does such a thing, without trial by anybody, no evidence being given in his defence, no jury, no court; try him and let these judges with their power pass judgment upon him. Three men responsible; no one to guide where any little informality by a single voter will disfranchise him. This is the nineteenth century and this is a Constitutional Convention framing a Constitution for the people who have lived in this Territory for nearly a quarter of a century. If there has been a crime committed, ballot-box stuffing, if there has been fraud in elections and if there will be at the coming election you will by the passage of this act do something that you know the like of which never before occurred in all Christendom. Three judges of election sitting there clothed with such power that authorizes them for a trifling irregularity, to disfranchise American citizens. The thought is appalling and he who gives them the right to do it is a party to the crime.

Mr. Peck: I tried to correct my amendment before Mr. Jolley got to going. I will read my amendment as I supposed my remarks would have conveyed: "That Section 7 of the report of the Committee on Schedule be amended by adding the following thereto, this to be considered paragraph by paragraph with the other portion of said section. This will be considered in connection with it."

Mr. Williams: I dislike very much to prolong the session, but I feel compelled as my friend Jolley says "to say something"; I feel that I have something that if I do not say it I will not be satisfied. I believe it is my duty, representing the people, to speak upon these questions when I have anything to say. I have endeavored since I have been in this Convention, as well as my friend Mr. Jolley,—and it has been an honest endeavor, that I shall speak little. My en-

deavor has been and my determination, to be a working member rather than a talking member. Being so determined I, impart that determination for what it is worth, to others, to guide us straight to our work of this Convention according to the powers which we have. And in order to arrive at the power which this Convention has we have to look to the Enabling Act and inasmuch as there are a great many of us we have looked at it from a great many different standpoints.

While I believe we are bound by every provision of this organic act and that we have no authority to overrule one of its provisions, I believe on the other hand that this body is not here solely with delegated powers. I believe that we are in existence and that being in existence, there are particular subjects that must come before this body; particular subjects to be considered and which this body was brought into existence to consider; that we can go beyond the rule laid down in the organic act known as the Omnibus Bill. I believe further, aside from that step this body meets here with all the powers that any constitutional body goes about its business. I do not claim that we meet with unlimited or untrammelled powers, but we meet with certain powers conferred upon us, and within the scope of these delegated powers we are bound hand and foot. But beyond that is a field and that in that field we are at liberty to work for the best interests of the people who sent us here, so as not to trample the restrictions imposed upon us by the Omnibus Bill. By the Constitution that was adopted on the 14th of May, I cannot understand my friend Jolley's speech nor this Ordinance, except we look at it this way; that a certain committee authorized by that Convention, sitting in that authorized Convention have powers that it does not in this Convention. We find a provision submitted to this Convention to become a part of the ordinance of this Convention from a Committee of which the gentleman is one of the leading members and if it passes it proposes to do just exactly as the gentleman says it is not in the power of this Convention to do, and that is to put vitality in this Constitution. I read the provision: "The election provided for herein shall be under the provisions of the Constitution herewith submitted." That is the provision that the Committee, of which he is one of the members, brings before this Convention. That is, that this Convention shall vote certain propositions putting vitality into the Constitution and making it a law of the land. With my limited knowledge of Constitutional

law, I assert that there is no power under the sun to give it vitality except the vote of the people when it is ratified. Then that Committee has arrogated to itself power that it has not got.

Mr. Van Buskirk: Where is that provision that you read?

Mr. Williams: You will find it in Section 7, report of the Schedule Committee.

Mr. Williams: Now, Mr. President, I wish to say this with reference to the question before the Convention, that is that these rules proposed here in this amendment are not for the purpose of establishing the qualifications or electors. There is a difference, a material difference between rules governing the deposit of a ballot by qualified electors by making a law prescribing the mode of depositing the ballot.

The amendment offered in Sec. 7 does not attempt in any particular to say what the qualifications of the electors are, but excepting the qualifications laid down by the statutes of the Territory of Dakota; it only proposes to say that the elector, with all that magnificent and grand power directed to him by the general government, which he undoubtedly possesses, shall deposit that ballot. That he shall exercise that right to vote, in a certain way, not in any manner prescribing or limiting the qualifications or rights as a voter; and if an honest voter it cuts no figure. The amendment is interposed for the purpose of preventing a dishonest voter from taking, or stealing I may say, the result of an honest ballot cast. Now, Sir, I would ask this, is the dishonest voter or his rights more sacred than the honest voter? The just voter and the unjust receive alike and are equally protected and guaranteed at this station in the enjoyment of the highest law in the land, that of the right of voting. This amendment does not detract or take from him one qualification nor add to one qualification. It says in order that your vote as cast may be cast honestly, and that you shall not be dictated to or interfered with directly or indirectly when casting an honest vote, only would require that you comply with this reasonable request. That is all that it is; it is not law. This ordinance the gentleman, by certain reports made, attempt to make and establish a law of the land upon certain questions that perhaps are not of as much interest, yet he denies the right of this Convention to prescribe a rule governing the rule by which he exercises the right, it does not attempt to bridge, only attempts to establish a rule of action in no sense assailing the fundamental right of in-

dividuals But it only prescribes a rule that shall be enforced just for the time being and it is in fact, most salutary in its effects. That is, if a voter is honestly intending to cast his vote and cast it in an honest way, this rule will not infringe upon him in any such act. But if the is intending to cast a dishonest vote, then probably in this rule, should it be adopted, he will find little comfort. I do not believe this Convention has any power to say that this question shall only be taken up by the Legislative power under this Constitution.

Mr. Sherwood: Is there any authority for the adopting of this Australian system except what is contained in these rules and in the Omnibus Bill? In the last clause of Section 3?

Mr. Williams: Without attempting to give a definite answer I will say this; whether we get this Australian system or not, I take it the Australian system in its entirety prescribes the qualifications of electors. This does not. We have here prescribed the rules and regulations for voting upon the adoption of the amendment to the Constitution denying that this Convention can by rule or regulation prescribe the mode of depositing the ballot for State officers. I understood that to be the position of the gentleman from Clay County.

Mr. Corson: I would ask if any county refuses to adopt this rule, what then? I am of the opinion that they cannot be compelled to it

Mr. Zitka: If I should come to the Ballot box after I prepared myself at the next election according to the Territorial laws in present existence and offered my vote, not having inquired about the laws or the manner in which the judges prescribed it shall be received, not conforming in every minor particular with the law as proposed in this amendment would the vote be legal or not; would the judges have to reject my vote and thus disfranchise me? Now have we the right to legislate and disfranchise the people, in this Convention? We are assuming a right we have no right to.

Mr. Williams: I think the judges would be right to reject your vote. What I intended to say was this; it being admitted Congress says in this organic act that at the same election we may provide for the election of certain officers, I would ask this question: Where is the authority for saying, except by violent presumption, that it was the intention of Congress, after once having granted the authority and prescribed the rule for one thing that we must provide

a different set of blanks for judges and clerks, and have an election conducted under different rules and regulations? I say where is the authority for that except by violent presumption, except in a strange interpretation of the Enabling Act? This is a presumption without a letter or word in this organic act, if we have the power to prescribe the rules for one and not the other election. They cannot be authorized by the Enabling Act at the same time. It must be the same electors, the same judges of election and clerk and the same ballot. As the Committee, of which the gentleman is a member have reported this bill, they have adopted that as their interpretation of the Enabling Act. Then the rules and regulations by the interpretation of this Committee shall be the same in each instance. Then the only way out of it is to say that because this is not granted to us by express words in one instance that we cannot exercise the powers granted us in another.

Mr. Cooper: Suppose a duly qualified elector should duly tender a legal ballot to the judges of election and they refuse to take it, under what law would he procure redress of the judges? I have not stopped to examine that and I do not care to now, but it is a question that I will take up and examine in time.

Mr. Van Buskirk: I am, myself in sympathy with the spirit proposed in this amendment, that is if we have the power to do it and if I vote against it I shall vote against it seriously and with the conviction that we have not the power to pass this amendment, and I shall regret that we have not. I have listened to arguments so far. I am sorry to say that my first impressions were not correct; from all I can see, and the best light upon this subject that I possess at this moment, I am forced to take a position upon this floor against this amendment. I do not know but that some member of the Committee who had this amendment under consideration, may have had their attention called to some other provisions than what I have; but I am at present constrained to think as Mr. Jolley has said, that all that we can find in this Omnibus Bill that will permit us to adopt this amendment will be contained, perhaps, in those words: "And all persons resident in said proposed states who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates and under such rules and regulations as such Convention may prescribe, not in conflict with this act."

I am sorry to say that it appears to me from that that if that

was the intention of Congress that we should prescribe that form of ballot only upon the Constitution. Turning from the last section referred to to Section 24: "That the Constitutional Conventions, may, by ordinance, provide for the election of officers for a full State government". I am very much at loss to understand how we can pass this amendment, adopt it, and make it of any obligatory force whatever. Unless I can get more light I am constrained to believe that if we pass that amendment and I should walk down to the polls and if I should present a ballot just as I would if we do not pass this, and if the judges acting in the spirit of this amendment, should reject my ballot I am very much in doubt whether I would have any action against them for refusing to receive my vote I am heartily in the spirit of this. If I could throw some further restrictions around the method of casting our ballot, I should do it; I would be glad if any member of this Convention can find any clause that can give us that power.

Mr. McFarland: What is the meaning of the expression "Provide for the election of officers"?

Mr. Van Buskirk: As I said, unless there is something more than is contained in this I shall be compelled regretfully to vote against this, because I am in sympathy with the proposition and phases of it. It don't say we must, but we may provide for the election; it says we may elect these State officers. I do not think with a reasonable interpretation of the act, we can do other than go to work as prescribed. I cannot find here authority to adopt a different manner in which to deposit our ballot than we now have on our statute books and as I say, if any member can inform me so I can consistently vote for the measure, and throw some further restrictions around the ballot, I shall be glad to do so. It is possible some member may have had his attention called to some provision other than what has been alluded to and it may help me out of out difficulty.

Mr. Hurtley: If we have no power to enforce the provision of the ordinance, leave that out, and suppose we adopt the rest of this ordinance which is here recommended,—if we have no power to enforce this ordinance, the ordinance we are adopting.

Mr. Van Buskirk: The ordinance we adopt does not prescribe any qualifications of the voters; does not prescribe any manner in which he shall receive it. The laws of the Territory steps in and supplies all those matters.

Mr. Lee: I do not wish to discuss this question now; I wish to call my friend's attention to the clause he read, Section 3—the last part of Section 3. Now, Sir, a few days ago, an unwary clerk at Washington misplaced the semi-colon and added the conjunction and, and it cost \$200.000 to fix that up when it was discovered and years of hard work. The matter should have read in the document that "Fruit-trees should be received without paying any duties, and he said "fruit and trees" and put the semi-colon after the third word, and some ingenious Yankee found out he could introduce his fruit as well as trees, and went before the court and the court sustained him. Now gentlemen, I am lawyer enough to see this; you take the third clause and read it down until you come to the next to the last conjunction, this is a matter of common sense and common sense is generally pretty good law. "The number of delegates to said Conventions respectively shall be seventy-five". Why haven't we a grain, haven't we more than a grain of common sense except old Father Lee" and all persons resident of said proposed states who are qualified voters of said Territories as herein provided shall be entitled to vote upon the election". Of what? "Delegates", and now the rest of these four lines don't mean anything for it is different states and made for a different time. We are not in Convention and we cannot do anything as a Convention until we are met here as a Convention(?). Beyond question seventy-five men were really elected; now can seventy-five men say we are elected and get together and make laws and do anything but lay the foundation,—lay the track upon which to sail this grand old State into the Union?

Beyond question when you cancel this conjunction and, you cannot do anything further. The rest of the four lines belongs down upon Section 24, and merely stuck on there. Sometimes a little piece of lead will stick to a bullet when we run it which we cut off to make the ball go straight. I am not ready to make my little speech.

Mr. Davies: I must say that the arguments have been so scattered that I do not know much more about it than when I came here this afternoon. The eyes of Dakota are upon this Convention and whether we have the power or not it seems to be generally understood that we have, and we are going to be held responsible. As I understand it the election that is going to take place next October,—the Constitution of the Territory of Dakota, the Con-

stitution which we are allowed to adopt has been anticipated and the framers of that Constitution designed that such an election would have to take place, as the election that is to take place next October. The question is, whether we govern, or are we to be governed in the mere manner of conducting that election by the laws of the Territory or are we to be governed by the act which created that election, by the Enabling Act of Congress,—in other words, does the Enabling Act say to us, "Go on with that election and have it according to the laws of your Territory" or does it go on and say "You will have your election and by ordinance elect your officers", etc.

Now if we can say whether the Enabling Act intended us to take that course, or say how it shall be conducted, I am not prepared to say which of these two we are to follow. It seems to me some of the members of this Committee that have given particular attention to this matter can confine their arguments to this one point. It seems to me we had better spend another day on this than murder the principle involved in this amendment. I should very much dislike to vote against the principle of protecting the ballot box. We know this is one of the greatest failures in American politics—the question of the preservation of the sanctity of the ballot box. It is one of the most vital questions confronting the American statesman today. I do not see my way at present to do it. Then too, there is a great question in my mind whether this law, if passed can be enforced practically if it is put in operation at our next October election. I want to vote for this but do not see my way clearly to that determination at present.

Mr. Zitka: I believe that this Convention has no power to legislate; has no power to change the general laws as they now stand upon our statute books. That we have no power whatever, or authority, not clothed with that authority to change the general election laws as they are now. If you adopt this amendment as it is here presented you certainly do that. My ballot may be rejected indeed, according to this amendment, should be rejected.. Are we not legislating here; are we arrogating to ourselves to rule, a right which was never granted to us? Certainly you are; Congress never meant that this should be done. Makers of the Constitution of 1885 never dreamed that this Convention, if it ever existed, would go to work to change the general election laws for the purpose of adoption of the Constitution. If there is any power anywhere it is in the Legis-

lature. I do not think that Mr. Williams studied this question very deeply. I think that for this reason. Yesterday he stated to me that this proposition in his mind was ill-timed; he didn't think it was good, and today he is supporting it. Considering the short length of time in which he changed his mind, I think he did not consider this as he should have done. Therefore, I state this that when you disfranchise the people of their rights to vote you disfranchise them of the dearest rights that a man has got. If I am a voter under the present Territorial laws, I am certainly a voter when I come to the ballot box to vote on the Constitution. You change your mode of voting, debar me and deprive me of the right to vote unless I conform to certain restrictions which never have been heard of before; that I must have certain initials upon the back of the ballot. Is not that, Sir, a practice which should be regulated to foreign countries ruled by kings and emperors. Is this, a free country, of the nineteenth century? Is this the United States of America, of which every citizen is proud of his citizenship? I believe this Australian system was made for Australia and not for this free United States.

Mr. Sterling: Gentlemen of the Convention; I think I fully appreciate the discussion of this question. I have reached my present conclusion after not a little thought and had we a little more opportunity to examine into the question of the rules and regulations pertaining to elections we would have found something startling upon the question discussed here today. I had intended examining the subject at length on that line. I have not had time to do so. What, gentlemen, does this amendment prescribe? Anything more than a few rules and regulations governing the conduct of the election at any particular polling place. I have heard the discussion. A few practical things have suggested themselves to my mind, that might happen in any polling place without any statutory provision upon the subject at all.

Suppose there is a notice of election to be held in a certain polling place in a certain ward or precinct, and suppose the managers of that election, the judges or clerks of election shall, on the morning of the election before they go to the polls and before anyone is there at all, mutually conclude, for the sake of convenience, although this is the place designated by law as the place for holding the election, nevertheless on account of some contingency that they had not thought of, for convenience or otherwise, remove it to some

other place reasonably convenient to all; that they made that change before the polls were open, do you believe that the voters of that precinct have got reasonable access to the polls at the place to which they were removed, that they could come in and say they were disfranchised because of that? I think not. Suppose in the absence of any statutory provision, the judges of the election had decided that they would not allow the election to be held in that place that the regulations recorded, that the public order recorded; further that they would not allow but one man in the polling place at a time, except the judges and clerks, do you believe that they would have the right to do it? I do. Does this amendment disqualify or effect the qualifications of the voter in any degree? No, it does not; it is simply saying that here on account of a particular element that we have to contend with at this place, on account of the great number of voters and the question at issue, it is better that we for this election prescribe these rules and regulations and deem it wise to designate the manner that the voter shall cast his ballot at the time. Then someone says: "I have the right to go in with this voter and vote." And the judges have said "No, the public order and public decency requires that but one come at a time to cast his ballot, and the party persists in demanding the privilege until the police power takes hold of him and says to him "You cannot go in". What is the result? He comes and says "I am disfranchised". Disfranchisement, indeed! Has he been prevented from casting an honest ballot? Far from it. I say he has not; I say that just rules as that the judges of election have the power to prescribe or if not the judges of election, then the county officers who have the management of the election within the county or precinct. It is a reasonable rule and regulation for that particular election. What is this? I believe that for the most part it is rules prescribing how many voters shall be in the apartment in which the votes are cast at a time. Nothing more than that. Nothing more than reasonable rule and regulation, and that in view of the several questions involved, the officers to be elected, the question of prohibition, the question of minority representation, the question of capital location, these make this a reasonable regulation to be made at the present time and under the circumstances under which this election will be held. There can be no question about it. Does it decrease the qualification of the voter in any sense? No, not at all. It does not prescribe the qualifications of a voter, simply

embodies the rules under which the election shall be conducted without infringing at all upon the voters qualification. They are the same as the laws of the Territory prescribe.

Mr. Sherwood: If a county or town refuse to furnish the places for voters would they be compelled to provide them?

Mr. Sterling: They might.

Mr. Sherwood: Then would that vote be received?

Mr. Sterling: I am inclined to think that they would be received so far as that is concerned. Now as to whether such a ballot will be received or not, whether this is complied with, I say gentleman, that that does not do away with the desirability of rules and regulations like these.

Suppose we do not conform with the rules and regulations in certain polls that the vote is received without, I say that these places will be comparatively few. The intent will be for the most part to follow the rules and regulations prescribed in this amendment and that the result will be that we will have an honest and pure election on account of these rules and regulations.

Mr. Van Buskirk: Let me ask a question; the difficulty that occurs to my mind is this: In place of a simple regulation a man cannot be permitted to vote any ballot except those tendered by the judges of election, with certain initials upon it. Is not that legislation?

Mr. Sterling: I do not believe that is legislation in conflict with any legislation in connection with the subject. The tendency is not towards disfranchisement of men. He has a ticket with all the names of the men nominated, printed under the rules and regulations. It is his privilege to change that ticket as he desires.

Mr. Van Buskirk: Under the existing laws and rules and regulations on the subject as in force now if we add these rules and regulations, isn't it legislation? is the difficulty that arises in my mind.

Mr. Sterling: I do not believe that it is.

Mr. Cooper: I desire to suggest this, gentlemen of this Convention, if this amendment can have any force at all it must go to the extent of repealing the election law of this Territory. If not the gentlemen who favor the project ask every gentleman who is judge of election at the coming election to commit a crime that the statutes of this Territory provides shall be punished in certain ways. The statutes of this Territory provide that certain persons

are qualified electors; that they can vote in a certain way; that if their vote or ballot is duly tendered that the judges of election must receive it and that if they refuse to receive it they are guilty of a crime and can be punished for so doing. The question that it suggests to my mind is first, is this proposed amendment legislation, if so, does it conflict with the laws that we already have and under which we would operate if this were not added to the report of the Schedule Committee? Now, the statutes of the Territory provides over the age of twenty-one years, or any male over the age of twenty-one years who has declared his intention to become a citizen of the United States, has the right to vote at any election within the Territory. It provides what his ballot shall be; that it shall be upon white paper with the name of the candidates and the matters to be voted for either written or printed, or partly written and partly printed. * I desire to ask the gentlemen of this Convention that if a qualified elector went to the voting precinct within the Territory of the proposed State of South Dakota, went to the polls at the place advertised that the polls would be open and tendered his ballot as provided by the statutes of this Territory and it was refused by the judges of that election if those judges would not be guilty of a crime and they could not be punished? I ask any gentleman, if under our laws as they now exist, if that judge could not be prosecuted, convicted and punished. I received no answer. I think that under the circumstances I am justified in answering it myself and if any gentleman does not agree with me I will like to have him correct me and give reason for such corrections. My idea is, gentlemen of this Convention, that if the ballot of the qualified elector was duly tendered in the proper manner and was refused by the judges of election that the judge who refused it would be guilty of a crime and that he could be prosecuted, convicted and punished under the laws of this Territory as they exist at the present time, because I do not believe there is anything in the Constitution as it now stands, anything in the Omnibus Bill as it was presented to us, anything in the Constitution as it will stand when finally adopted by the people of this Territory, that repeals the election laws of this Territory as to-day existant. They say it does not strike at the qualifications of the elector. We will presume, for the sake of the argument, that this Convention deems it wise to require that all electors shall vote upon tickets colored red, white and blue and the judges of election at the coming election in Octo-

ber shall say that statutes of this Territory prescribes that the ballots must be on white paper. We refuse to accept your ballot because it does not comply with the statutes of this Territory under which we are voting; we won't receive them. I ask, gentlemen of this Convention, if there is any power on earth to punish these judges for refusing to accept that ballot. I ask you in the name of reason and common sense the question, and ask every member of the Convention that if this Convention authorizes, nay requires, that a man would so vote a ballot red, white and blue, I ask if this man is not disfranchised? I have noticed this to be true that when men are so very free to allege fraud and want to punish crime to such a great extent when there is no basis for it that they are willing yea willing and sometimes anxious to override the laws themselves, to commit a crime themselves and compel the agents of the government under which they live, to commit crime. I am not talking upon the advisability of this law as to whether or not it would be a good thing of a bad thing. I believe in throwing around the election everything that I can in the nature of restrictions that will protect the ballot and make our elections pure; I would be in favor of a law that would prevent fraud at the polls and would throw around the voter, conditions that would isolate him from men, when in the act or casting his ballot. I would be in favor of a law that would make it a misdemeanor to approach a voter and undertake to talk to him as to how he should vote, within a hundred feet of the polling place. I do not believe this Convention has the power to do it because this is not a legislative body. I cannot vote for it because when I became a member of this Convention I registered an oath in Heaven that I would do my duty faithfully and well, just as I understood it. I do not believe that this Convention has the power to do it. I do not believe that this Convention, by calling it Rules and Regulations, can say that a man must bring the initials of any man or set of officers to the papers to the polling place and show them to certain parties, even if this Constitutional Convention desires it should be done, before he can cast his ballot, and why? Because the statutes of this Territory provide another manner and another way of voting. I do not believe we can change these laws of this Territory. I desire to ask, gentlemen of this Convention, where there is any power to enforce any of these rules and regulations? Suppose as has been said by other gentlemen who have talked upon the other side of this question, many towns and count-

ies in South Dakota should refuse to comply with this amendment, would you refuse their vote? Suppose Tom, Dick and Harry all over this proposed State should go to the polls and say I want to vote upon a white ballot. I will write the names upon the ballot I want to vote for; I do not want the names of Republican nor Democrat upon my ticket; I want the names of my particular candidates upon it. It is refused; what will be the result? The next five years will be blackened with the prosecution of judges and clerks of election. I say, that in my opinion this is a malicious scheme. I shall ever wish to prevent any deal of this kind. While I will go to as great length as any member of this Convention, when the time comes that we can throw around the ballot box, legally, new protection and safeguards that will insure purity in our elections, not criminally but legally, I am heartily in favor of that action at the proper time and under the proper conditions. I am not in favor of this Constitutional Convention assuming that perogative. The members of this Convention do not even understand, I do not believe, do not even understand the working of this amendment. I never lived in Australia, nor Canada, nor England; I don't know what it is, but it seems to me that it is altogether "too English you know." I believe in this Union; I believe in national independence; I believe in this country; I believe that when the time comes when they have got the power and right to do it, the people will go to work and declare a bill of this kind if it is necessary. They will do it in a legal way and then it will be effectual. But if we assume to legislate in this manner it will be illegal and you at the same time commit a crime yourselves and ask every judge of election to commit a crime and at the same time place upon yourselves the burden of carrying the prosecution. It must necessarily fail.

Mr. Humphrey: It is not my purpose to enter into a legal discussion of this question nor even to make small of the arguments that have been presented for I have been very much edified by them. The few words I propose to say will be in explanation of the vote I shall cast. While I am second to none in my desire for protection of the ballot box, while I am in perfect sympathy with every effort to do that, the question of power, in my judgment, comes under this Federal law in this clause. I will say in regard to the Territorial law in regard to regulating elections and as far as any regulation that this Convention may stipulate or pretend to, or any regulation

now required by the laws of the Territory, they in no manner disfranchise anyone. This is simply a method of procedure in casting the vote. The latter part of the 3rd clause has been read here to substantiate the grounds that the ratification of the Constitution must be under the same restrictions as an election of delegates to this Convention.

In the sentence preceding that I find specified the restrictions under which the delegates to this Convention were to be elected and the point to my mind is this: I find there are two different regulations for two different purposes,—the one for the election of delegates in which it says the delegates shall be elected and the returns made in the same manner as prescribed by the laws of the Territory. Now when we come to the ratification of the Constitution it shall be under such rules and regulations as this Convention determines. Now then, we would not be permitted under that clause to make any restriction or regulation different from the Territorial law for any other purpose than the adoption of the Constitution, in my judgment. If we adopted this amendment, we would require two elections,—one to vote for the officers and one for the adopting of the Constitution. I think that that is the only thing to which we could apply it; that is the only point in which we have the power to adopt the regulations or restrictions other than those provided by Territorial law, if we elect officers at the same time. There is no question about the legality of our providing for an election, but unless we provide for two elections we could not adopt this amendment, and not being in favor of two elections, I would not vote for this amendment.

Mr. Young: Under the influence of its personal oratory and under the influence of some of the doctrines of some of the speakers, I really expected to see this Convention break away into the greatest enthusiastic uproar. Springer builded better than he knew. I have just two points to make: One is, that it is not the right or duty to undertake to seek an enumerated power to make this regulation in the Enabling Act. This is part of a Schedule; this is not a part of the Constitution, and from the very nature of the Constitution under which that Enabling Act was passed, why it would be just monstrous to enumerate the powers under which we should work in drawing up a Schedule and Ordinance. These specifically enumerated powers are the strict limitations under which we have

been working and suffering here. They were brought about and had reason only on this ground, that the people of that part of the Territory of Dakota that formed the State of South Dakota had ratified the Constitution of 1885. A delegated body, such as this, has nothing in particular to do with it except those things as the commands in the Act require. They did not, however, ratify the Schedule and Ordinance; it was understood that that disappeared with the action they had in 1885 and that as far as the Schedule and Ordinance was concerned we had full plenary power as a body, to bridge over this somewhat revolutionary state of things. The idea of our laboring under delegated powers, drawing a Schedule and Ordinance is altogether out of any reason, because here we are framing a Constitution and we are not supposed to have the powers of ordinary State legislation. We are not tampering with the Constitutional Act because the people of the State have expressed themselves upon that point and therefore our hands are off from the Constitution but when it comes to the Schedule and Ordinance then we have all the power which should be left to a people acting as a body politic which is about to assume the position of one of the dignified states of the Union. Now, just one other point,—the point I make is that it is not our duty to take or look for any delegated, distinctly enumerated powers in the Enabling Act in drawing up these rules and regulations in our Schedule and Ordinance; the other is that we are not, in our Schedule and Ordinance, drawing up or prescribing the qualifications of voters. We are not, because there is something of a weak, diluted Australian System of voting. The Australian Ballot System has been considered by the State Legislatures, I think by every State Legislature in the Union. This Australian Ballot System has been adopted by the State Legislatures of at least twelve states without requiring perhaps an amendment to the State Constitution, so that therefore any modified form of the Australian System does not presume additional qualifications of voters and as this system has been adopted by the different States without requiring an amendment of the State Constitution, it cannot be construed into any different qualifications for the voters. The qualification of voters is always prescribed in the Constitution of the different states and as the adoption in these different States of this system of voting did not bring about an amendment of that Constitution I see perfectly clear, there is

nothing like an additional qualification added to the voters in the adoption of this amendment.

Mr. Sherwood: I desire to say this as a closing proposition. I asked the gentleman from Bon Homme, Mr. Williams, what effect this would have upon questions where the counties refused to hold this election, and as an answer, as I understood him to say, that they would not be compelled to hold them under this Australian System unless they desired to do so. The same was substantially answered by the gentleman from Spink. The object of this system, if it has an object at all, is to reach those localities where frauds at the ballot are known to have been perpetrated. I admit that any rule, or restriction, anything that this Convention would pass, would be perhaps heeded and obeyed carefully as a rule in this State of South Dakota, wherever the Board of Township officers lived whose purpose and object was to defy this law while there was evidently an intent to defraud at the ballot box at that place if they was no power that would compel them to yield to this law there would find the law would be an absolute nullity and of no effect whatever. If that is true, then this law we are considering, if it pass this Convention is going into effect where there will be no violation of the law, going to be set aside in all that portion of the country where there would naturally be violation of the law. I desire to say that I am in full sympathy with every effort to throw every safeguard around the ballot box. I think if this Convention had the power they might pass these rules and regulations. I believe as the gentleman who has preceded me, that they have not the power to enforce this regulation to the extent of going into these precincts where the law would be violated and compel it to be respected there; hence I shall vote against the amendment.

Mr. Willis: I begin to see light a little; I begin to find for my own purposes, for the purposes of determining my own convictions on this subject; I want light upon the one point of authority,—whether or not we have the authority. I have felt within myself—of course I could not express it judicially,—I have sort of felt within myself somehow, even with the arguments with which we have been regaled on this floor, to be impressed with the conviction that the adoption of this amendment, either by intention or in fact, was no restriction upon anybody's ballot, upon the form of anybody's ballot. The idea to me is exceedingly far-fetched. I cannot connect it as having any force whatever in this connection. I

have a feeling way down within me that the mere presentation of that argument is a superfine sort of suggestion of the motive that may determine the position of this amendment. I am exceedingly glad for this little light from these lawyers. Of course it is, this great work is prescribed by Bill Springer's bill. The great work that we have been elected to do here has been such as to give most peculiar concern to the lawyers and the judges. We preachers and the other fellows have not had much difficulty and we feel proud we have this Convention and that we have a part in it. We feel that it was particularly now, the lawyers and judges that we want to hear from upon this one particular point of our authority. I have no sympathy with anybody who is weak-kneed at all when it comes to this question of throwing any rational safeguard around the ballot box. If there is anything, any subject that is popular today and that is momentiously gaining in popularity it is the question, the ballot box reform. There may be some here who are not Australians who recognize the necessity of reform in the American ballot system, to whom the terrorizing methods employed in some parts of our fair country are perfectly familiar, to whom even the recital of blackest murder perpetrated at the polls does not cause a start of surprise who dare stand up and speak against the reform of the ballot box, but I doubt it. If there is anything that is dear to the average American it is the right of free ballot, but enough for that. The one point is, have we authority; are we simply a set of manikins dangling upon wires adjusted by Bill Springer with automatic arrangement that with regular time and rhythm go through our set of dances and contortions? We are not that sort of a crowd. We want something provided; call it Australian System if you will. We are not trying to restrict honest men at all. There is nothing that can be so construed, except by the most determined, I may say mendacious distortion to any attempt on the part of anybody to prevent Jim Jones or Pete Smith from voting as he pleases. Anything of that characterization is perfectly mendacious and what we want is light on this question of authority. The lawyers disagree, and when lawyers and doctors disagree then we must depend upon our own good common sense in great measure determining these questions. Congress showed us no favor in this; this Convention is doubtless as respectable as the other and the other as respectable as this. At least we will allow this with

a great deal of generosity. Congress did not say so probably for this you will give us credit. Lawyers disagree upon this proposition; I do not think we are ready to vote; I do not want this dropped. If I judge the state of the Convention pulse correctly, taking into consideration the hour, I think it would down. I would hardly know just how to vote myself. I think we ought to vote upon this question intelligently. I move we defer further consideration of this question until eight o'clock tonight.

Which motion received a second and upon being put to a vote, prevailed.

Mr. Williams: I move that when we adjourn we adjourn to meet at eight o'clock this evening. Carried.

Mr. Peck: I move that we do now adjourn.

The Chairman: The gentleman from Hamlin moves that the Convention do now adjourn; those favoring this motion please make it known by saying aye. The motion prevails; the Convention stands adjourned until eight o'clock this evening.

Hall of the Constitutional Convention, Sioux Falls, Dakota, Friday, July 26th, 1889, 8 P. M. Convention re-assembled pursuant to adjournment.

The President: Will Colonel Jolley, of Clay, take the chair.

Mr. Jolley (as Chairman): Gentlemen of the Convention, the question is upon the adoption of the amendment offered by the gentleman from Hamlin. What is the pleasure of the Convention?

Mr. Anderson (of Hand): Inasmuch as there is some question as to the wording of the amendment before the Convention, I call for the reading of the amendment as it stands tonight.

The clerk reads the amendment.

RULES REGULATING THE ELECTION TO BE HELD UNDER THE AUTHORITY OF THE ENABLING ACT FOR THE ADOPTION OR REJECTION OF THE CONSTITUTION AND THE ARTICLE SEPARATELY SUBMITTED THEREWITH AND THE REPRESENTATIVES IN CONGRESS; ALSO STATE AND JUDICIAL OFFICERS FOR SOUTH DAKOTA.

SEC. 1. That at the election to be held on the first day of October, 1889, the election laws now in force in the Territory of Dakota shall apply to and govern such election except as herein after specially provided.

SEC. 2. Nominations for State officers, Representatives in Congress and Judges of the Supreme Court shall be made by any State Convention and certified to by the Chairman and Secretary of such Convention, according to form number one (1) hereinafter

provided, or by any three hundred (300) legal voters in South Dakota attaching their names to a paper nominating candidates and filing the same with the Territorial Secretary.

SEC. 3. Nominations for members of the State Legislature, Judges of the Circuit Court and Judges of County Courts shall be made by any convention held in legislative and judicial districts or county for which any such officer is to be elected, and certified to by the Chairman and Secretary, according to form No. 2. hereinafter prescribed, or by any one hundred legal voters of any legislative or judicial district or county, by attaching their names to a paper nominating such officers, and filing the same with the County Clerk or County Auditor to which such nominations refer.

SEC. 4. All certificates of nominations and nominating papers provided for in Section Two (2) shall be filed with the Territorial Secretary by the fifteenth day of September, and all those provided for in Section Three (3) shall be filed with the County Clerk or County Auditor by the twentieth day of September, 1889, and no certificate of nomination or nominating papers shall be acted upon, except accompanied with the consent in writing of the person or persons therein nominated, provided that in case of death or resignation, the authority making such nomination shall be permitted to fill such vacancy by a new nomination.

SEC. 5. The Territorial Secretary, on the receipt by him of the nominating papers hereinbefore mentioned, shall forthwith transmit true copies of the same to the County Clerks or County Auditors of the several counties in South Dakota.

SEC. 6. The County Clerk or County Auditor shall, after the expiration of the time for receiving the nominating papers, forthwith cause to be printed such a number of ballot papers as will be sufficient for the purpose of election, and the number necessary for each polling place shall be bound or stitched in a book of convenient form, and the County Clerk or County Auditor shall cause to be printed in English, in large type, on cards, instructions for the guidance of voters in preparing their ballot paper; such Clerk or Auditor shall furnish ten (10) copies of such instructions to the Judges of such election precinct, and said Judges shall cause them to be posted both inside and outside of the polling place, and said County Clerk or County Auditor shall, as provided by law, cause to be delivered to the proper Judges of election the ballot box and all poll books now by law required or by this ordinance required to conduct and complete the election, also the ballot papers, at least two (2) days before polling the vote; and shall cause to be published in each newspaper in the county a true copy of the ballot paper and card of instructions, said publication to be in the last issue of said papers before the day of voting.

SEC. 7. Every ballot paper shall contain the names of all candidates for Representatives in Congress, State and Judicial officers, and members of the Legislature, and the name of the political party

to which each candidate belongs; asso the form of the ballot for the adoption or rejection of the Constitution and the articles separately submitted therewith as provided in this ordinance.

SEC. 8. Each polling place shall be furnished with a sufficient number of compartments, in which each voter, screened from observation, shall mark his ballot paper, and a guard rail so constructed that only persons within such rail can approach within ten (10) feet of the ballot box, and it shall be the duty of the Judges of election in each polling place to see that a sufficient number of such places be provided and shall appoint a person to guard the entrance to such compartments and he shall be paid the same as Judges of election.

SEC. 9. The voters being admitted one at a time for each compartment where the poll is held shall declare his name, and when permitted by the Judges to vote, his name shall be entered on the voters' list and he shall receive from one of the Judges of election a ballot paper on the back of which the initials of one of the Judges of election shall be so placed that when the ballot paper is folded they can be seen without opening it, and the Judges of election shall instruct him how to mark his ballot paper.

SEC. 10. The voter, on receiving his ballot paper, shall forthwith proceed to one of the compartments of the polling station and there without undue delay, not exceeding five minutes, mark his ballot paper by putting a cross (X) in the space to the right hand side of the name of the person for whom he desires to vote and if he desires to vote for any person whose name is not on his ballot paper he may write or paste on his ballot paper the name of the person for whom he desires to vote, and shall then fold up his ballot paper, so that the initials on the back can be seen without opening it ascertain that the initials are on it and that it is the same ballot paper given to the voter, and shall then place it in the ballot box and the voter shall quit the polling compartment as soon as his ballot paper has been put in the ballot box.

SEC. 11. The Judges of election, on the application of any voter who is unable to vote in the manner provided, shall assist such voter by marking his ballot paper in the manner desired by such voter in the presence of the persons permitted to be in the compartment occupied by the Judges and no others, and shall place such ballot paper in the ballot box, and when the Judges of election shall not understand the language spoken by the voter claiming to vote, they shall swear an interpreter, who shall be the means of communication between them and the voter with reference to all matters required to enable such voter to vote.

SEC. 12. A voter who has inadvertently dealt with the ballot paper given him, in such manner that it cannot be conveniently used, may, on delivering the same to the Judges, obtain another ballot paper in place of that so delivered up.

SEC. 13. Any voter refusing to take the oath or affirmation of

qualification as required by law, when requested to do so, shall not receive a ballot paper or be permitted to vote.

SEC. 14. No person shall be allowed to take his ballot paper out of the polling place, nor, except as in the case provided for by Section Eleven (11), to show it when marked to any person so as to allow the name of the candidate for whom he has voted to be known, and any voter who violates or refuses to comply with this ordinance shall not be permitted to vote.

SEC. 15. In addition to the Judges and Clerks of election, one watcher at each polling precinct for each political party presenting a candidate or candidates for the suffrage of the voters and no others shall be permitted to be in the compartment occupied by the Judges on election day, and such Judges, Clerks and Watchers shall, before entering upon their respective duties take and subscribe to the following oath or affirmation;

I, John Jones, do solemnly swear (or affirm) that I will keep secret the names of the candidates for whom any voter may have marked his ballot paper in my presence at this election, so help me God.

SIGNED:

J. J.

Sworn or (affirmed) before me at this first day of October, 1889.

Justice of the Peace or Judge of Election.

SEC. 16. Immediately on the close of the poll the Judges, in the presence of the Clerks of Election and such of the watchers and voters as desire to be present, shall open the ballot box and proceed to count the number of votes for each candidate; in doing so they shall reject all ballot papers which have not been supplied by them as Judges of said election, all ballots by which more candidates have been voted for than there are officers to be elected; also those upon which there is any writing or mark by which the voter can be identified; all the ballots voted and counted, and those rejected, those spoiled and those unused, shall be put into separate envelopes, and all those parcels shall be endorsed so as to indicate their contents, and be placed in the ballot box and a return of the result of the election at the polling precinct shall be made to the County Clerk or County Auditor, as now required by law for the election of members of the Territorial Legislature.

SEC. 17. All expenses incurred under these rules to be a charge against the county and audited and paid as other claims against the county.

Mr. Anderson (of Hand): I shall not attempt to discuss the legal aspect of this question at this time but I wish to state some of the reasons to this Convention why I am in favor of this amendment. In the first place the people whom I represent are all unanimously in favor of this proposition, upon the adoption of a prop-

osition of this kind, possibly with the exception of a few political bulldozers and ticket peddlers at two dollars per day will receive the support of most men; men who boast judiciously and expeditiously selling their votes for every election of the last seven years will not be pleased should this Convention pass this amendment. It is for the purpose of blocking the wheels for this class of men, gentlemen of the Convention, that I am in favor of the adoption of this proposition. At the last general election held in our county, in one township it is estimated that there was expended to purchase votes, \$1100. and gentlemen, it was openly and publicly done in a great many cases. In another township in our county and they cast votes in that township, there was as high as \$1000. expended to purchase and influence votes. Let me say to you gentlemen, that in that particular township, not receiving the price for their votes, at the last election held in our county for the election of delegates who are here on this floor, they refused to vote for the candidates who were before them for election, but met in Convention and instead of voting the ticket that they had provided, they voted for each other, and when questioned as to why they adopted that report, their reply was: "Why, the candidates didn't put up anything; they didn't even come around and set up the beer." Gentlemen of the Convention, this is only a part of the state of affairs existing in the Territory of Dakota. I am informed that it exists, not only in the County of Hand, but that it exists in other counties. Now, gentlemen of the Convention, the opportunity is offered for you to place yourselves upon record and so far as the legal aspect of this Convention is concerned, I am satisfied myself that we have the full power of authority to adopt a proposition of that kind. I shall not detain you by giving my reasons for having arrived at that conclusion. We have heard a good deal in the last four or five years about the purity of the ballot, an honest ballot and a fair count, and you, gentleman, having expressed your views of an honest ballot have an opportunity tonight to place yourselves upon record as to whether or not you are in favor of an honest ballot and a fair count. I do not expect, gentlemen of the Convention, to appear in public again, in Hand County as my friend from Codington remarked,—this is my last appearance. I have no political ambitions, aspirations, and if I had I belong to the hopeless minority. But I do wish to see adopted, a plan that will preserve the

purity of the ballot box; that will protect the voter, the laboring men, the employees of the corporations in an independent exercise of the right of suffrage. I hope this Convention will put itself squarely upon the records. This system is being adopted by quite a number of the states. I prophesy it will be in every state in this Union. Probably gentlemen, you will see the time if you vote against the proposition to protect the ballot you may be ashamed of the vote you cast against it. After what I have seen practiced in the Territory of Dakota I do not intend to let an opportunity pass to cast my vote in this Convention upon this proposition and squarely in favor of it.

Mr. Dickinson: I have had nothing to say this afternoon, because I have had considerable to say in the Committee in the consideration of this subject and because I was very anxious to see what might be said upon the other side, that there might be the fullest expression, the strongest expression possible in opposition to this measure which has been proposed. Mr. President, I must say that I was amazed at the tenor of the arguments and upon the result of the arguments upon those who were present, gentlemen, who have been active as I have. I confess freely, I myself have been active in the endeavor to form this measure and secure the adoption in this Convention of these rules. For by the tenor of these addresses delivered this afternoon and apparently by the conviction produced upon the minds of many, we may be open to the charge of committing the greatest offense against the rights and interests of the people of the State of South Dakota. I have been contending, not for attempts to provide for wholesale bribery and attempts to so demoralize and corrupt the election laws that it might be possible to illegally vote to corrupt the vote and thus as unerringly as the sun follows down to place a stigma upon the fair name of our state because thereof. But have been contending, Mr. President, by an honest endeavor to provide in some measure for a just, honest, pure vote, for a just, true and fair expression of our people of the State of South Dakota and their will in reference to certain great issues that come before us in the first days of October next. We have in this hall as high and honorable and representative a body of men as you could get together and we are met here for acting or proceeding upon questions of vital importance and far reaching in their trend; a body of men such as will never

come together again in the history of this State from now on to the end of time, taking into consideration our business. Grave interests over which the hearts and minds of the honest people of South Dakota burdened and anxious and the decision they desire most earnestly shall be true and right and just; true expression of the minds and wills and purposes and intents of the people. And Mr. Chairman, I am not a lawyer, but I desire to call attention to the line of attempted argument that has been brought up. All of these lines of arguments and this outpour of eloquence has been upon us, not for any attempted corroboration, not for anything openly unjust because we are attempting to provide for purity and a just expression of the minds and wills of the people. The force of the arguments to this proposition, made and proven apparently to the satisfaction of those who have spoken, is that we are here without power to do anything for the protection of the ballot box, but I would venture in the opinion that we have the power, that it comes to us from three fold sources. First, that we have the powers delegated to us in this Enabling Act from the Congress of the United States as to the larger parts of the interests involved in the election this fall. There has been no dispute of the claim that we have the power and even those who have spoken upon the other side have conceded that we have the power as to a submission of the Constitution to a vote of the people, as to the submission of the amendments relating to the minority representation, as to the submission of the amendment relative to Prohibition, as to the submission of the question of the location of the temporary seat of government; there is no question but that Congress gives us full power to make rules governing the election relating to those topics at all. It is conceded by every lawyer that I have heard speak upon that subject that it was a part of ordinary wisdom to conclude that when making that provision it was intended, when it states that you would also provide election at the same time for State officers, it was simply presumed to say that if we made laws for governing one part of the election, it might be presumed to cover the remainder of the issues of the election held at the same time but there is one consideration that I wish to call attention to and that is this: Speaking of the election of the delegates to this Constitutional Convention in the election of the 14th of May, the Enabling Act specifies that that election was to take place under

the rules of the Territory of Dakota. Then passing from the Convention when it was assembled, was required to submit the Constitution to the people, says that they may vote for or against the Constitution, under such rules as the Convention may prescribe.

Mr. President, why is it that the Enabling Act specified what election laws shall govern the election of delegates in the spring. I venture to guess that it was to determine what laws should govern because there would be no body in session; it would be before the Convention had existence; therefore Congress points out what laws shall govern and when we are assembled in Constitutional Convention it says the Convention might provide rules for the election upon the proposition, and when we come to the provisions of the 24th section of the Enabling Act for the election at the same time of the State officers, which we may by ordinance provide for and for the judges at the same time. Again nothing is said in reference to the laws that shall prevail and govern the election of State officers. Why is the Enabling Act silent there? I take it, Mr. President, that it is because it was deemed that this Constitutional Convention, having come together and having been thereby empowered to provide for the election of State officers, would without provision be provided with power to make the rules that should govern that election. It was silent with reference to the body that would be in existence and failed to provide for those election laws. It speaks definitely of what election laws should prevail when no such body was in existence and when we come together and provide for the election of officers, here it leaves us to ourselves to say what rules shall govern. It was the intention that those rules should be the rules of the Territorial election laws, if that law was to guide, I believe that that would have been definitely stated.

The Enabling Act has not been carelessly drawn. What I say is this: Those men knew what they were doing. I believe that they knew what they were calling into existence. This Constitutional Convention, made up of select representatives of the people of South Dakota, they honored us and honored themselves enough to say that we could be trusted to provide them ourselves. You may by ordinance provide the way for the election of State officers at the same time, by ordinance,—and that ordinance in the opinion of the best lawyers carries with it the power to pass the rules

governing the election as well as the power to submit the names of the officers that shall be elected and the offices that shall be filled. Now, Mr. President, I insist upon that point, that if it had been as essential as these men would have us believe it is, they would be so anxious that we do nothing to endanger our prospects for we must not forget they say that the President may shut us out at the time when statehood is just within our grasp. If it had been so essential that point would not have been left unguarded. We have found as we have been working carefully through this Constitution, we have found our point carefully guarded, we have found that they made no great mistakes. I can easily believe, and most thoroughly and sincerely believe that even had Congress gone so far as to say that we might have provided for our own election we could have been safely trusted to do it and that if we had done so we would have conducted the election under the Territorial law. We have no right to make the presumption that we must hold the election under the State law. This language is compulsory whenever mention of Territorial business is made as the adoption of the Constitution and the amendments severally submitted, the extra provision for the temporary location of the capital and the like. Mr. President, I am not a lawyer; I will confess that I commenced studying this point because the people were interested and were asking questions about it, whether the laws of the Territory would prevail, away last March,—asking about that and anticipating that we would have the power to provide the rules for the election. I will confess that I commenced studying it myself and asking the opinion of every lawyer I came in contact with and have taken it to every man that is recognized as being authority on that subject. I have in case after case, found the unhesitating answer, that it gave us all the power anybody could possibly assume; that the complete power was ours to provide for this ballot. To provide for an honest election against which there should be no suspicion or taint whatever. Gentlemen, I would have such a rule here today as a body representing the several states to be. We come here under a government in which majority rules and there is under the God of Nations no higher authority than the will of the majority. We are proud of it; we want that the majority shall rule in this. We come as agents of and representing the majority of the people of South Dakota. We have met in Convention so to

speak, as ambassadors of the majority of the people of South Dakota, cognizant of their will and sentiments and we are supposed to be here to express it for them and if the majority of the delegates belonging to this body shall deem it the part of wisdom and within their powers and province, that decision will be the decision of the people of South Dakota. Any decision or vote passed here today embodying our best wisdom and discretion, bearing upon its face the evidence of honesty and sincerity of purpose, will merit and be clothed with the dignity of an expression of the wisdom of the will of the people of South Dakota as a matter of law. We are sent here by the choice of the people to make or finish and adopt a Constitution a greater, graver or more serious work than that never has been enacted in the history of any nation or any state. They demand that of us and expect and trust us to do that and if the majority of this Convention I say shall decide that it is wise and best to pass certain election laws for the government of the election this fall it is the recommendation and expression of the will of the majority of the people of South Dakota. I know a paltry few, an insignificant few, will not endorse our actions, but it will be so recognized by the people. When a few years ago the Constitution of 1885 was submitted, when we had no State, when we had no authority, when we had no power but that which the people gave us, when the Constitution was provided and submitted, we had a Schedule and Ordinance providing for the manner of election. The people solemnly and carefully observed those rules and we never had a more conscientious election than that when it was proceeded under by the people who recognized it as the expression of the majority. Mr. President, at this time, when graver issues are at stake, when there are important issues to be decided, I venture to believe every honest delegate upon this floor agrees with me that when we go before our people with this amendment as a part of our Schedule and Ordinance that the people will respect the recommendation of this Constitutional Convention; that they will support earnestly and carefully, respect all rules for that election that we recommend. For they know this: Some of the delegates here on this floor seem to have forgotten that this is not in the interests of corruption, is not anything dishonest, anything unseen; it is honest and expresses their will; it is what they want. They want to do away with some of the baneful pernicious practices at the polls, the greatest inter-

ests of the Territory want it done; the great mass of the people of South Dakota are loyal to civil purity and are opposed to bribery, corruption, intimidation and fraud. We need not fear to trust ourselves, Mr. President, to trust ourselves to the people for anything that we enact, as I say, even as their representatives. We will have no fear to submit to them any enactment which is an honest and true expression of their minds and wills to their suffrages in the election in October. Mr. President, I have filled with wonder at the men of straws, that anxious men, members of this Convention, have set up and made war upon this afternoon. The first of these is the one where it is said that if we passed this bill, endorsed this provision and adopted these rules that Mr. President Harrison, when he learns that these were the rules under which the election was conducted will refuse to admit us as a State. Mr. President, I am astonished that any intelligent man will undertake to make use of such a proposition. That we made an honest attempt to secure an honest election, that the people were accustomed to vote by this means, that they did so vote by the rules and measures that were enacted to promote purity at the ballot box and disownance bribery, intimidation and coercion; therefore, because he had reason to believe that the election pronounced the expression of the sentiments of the people of Dakota, therefore, he would refuse to admit the State into the Union. I would say attempt it if the ballot boxes were left open, then left as they have been, subject to all charges of corruption that they have been, how those men use that insane argument and bring it forward expecting any intelligent man to believe it is beyond my comprehension. I have greater confidence in the President of the United Staes than this. I would be ashamed to even meet the powers that be if I, for one moment, believed that that jeopardizes the causes of statehood to attempt to have a pure election next October. The other man of straw that has been set up here is this, that we are aiming a blow at the right of suffrage, disfranchising voters by prescribing certain rules. Mr. President, I would ask any man on this floor, who is disfranchised by this movement. Are we opposed to any rules we do not feel called upon to comply with them, we do not take the trouble to go and secure a ballot or if the officers of the election refuse to prefer charges against them. The cause comes up for hearing, we are put on the stand, no judge in South Dakota would convict

on that charge(?). Were I a lawyer, I should hesitate very much to jeopardize my reputation as a lawyer by such a statement as that. The answer would be and the answer that would silence all objections, that that man would have the opportunity to take a ballot the same as other men took one, that was prepared for him, that contained all names of all candidates and every proposition to be submitted to the people, that he might have an opportunity to take that by himself and without being overlooked, and without intimidation or coercion to make it right, to make it just exactly what he wanted it if he was not pleased with the regular nominees to strike them all off and put in whatever he wanted. He could go and deposit the ballot and exercise the right of suffrage; one man could do that and every man required to do it. Why? In order that that man might be protected in the free exercise in his own right of suffrage and demand that every man might be protected in his free exercise of suffrage, the proposition is in order that no man can hold over another the whip and use intimidation on that if he did not vote so and so, such and such would be the result. On the other hand, going by himself he makes up the ticket as he will without knowledge of anyone and beyond power of anybody to coerce him afterward. This is protection of that voter, the protection of every voter, this is freedom secured as far as in our power to secure it; this is for the interests of that man and every man and my friend here whom I respect and whose nationality I respect, would be deprived of no right of suffrage. He would have every opportunity to vote for anybody he might desire.

Mr. Zitka: Not if he voted according to the laws of this Territory.

Mr. Dickinson: If he voted as every other voter voted and as he should vote. There is one other point, Mr. President, that has been brought up, that if we recommend such rules and the people fail to pay any regard to them it has been openly said by those who may be citizens of this town that it would not be respected in Sioux Falls and other places like this and what is the use of passing that would not be respected. I repeat the facts stated in my opening remarks the honest careful observation of the former Constitution I have firm faith in the people of South Dakota, that they would pay no less deference to the recommendations and rules appointed by this Constitutional Convention. Mr. President, there

is in these rules, if passed by this body the power of self endorsement. No one has the right to assume in Sioux Falls or anywhere else in South Dakota the people in South Dakota would not sustain us in this amendment passing such restrictions. There is nowhere else that we have stronger pleas for a passage for this or a similar measure than to the people of Sioux Falls. We have had from no other locality stronger statements made that we were undoubtedly empowered to take such action and that it was demanded of us to make some such rule. We take this as self-evident there will be a larger number of citizens here that will be interested in seeing these rules applied and it will be partially an incentive to diligence on the part of those who control elections in this city or anywhere else in South Dakota not to refuse to adopt and put in force these rules and regulations, which other parts of Dakota are using and which are intended to secure a fair expression of the will of the people. If anybody disregards these rules in what interest will it be, why willfully do it? Will it be in the interest of purity and true suffrage of the people? No, it will be in the interest of corruption, bribery, false election and false return. Mr. President, we have said that great interests are coming up for decision. I wish to see that every delegate here and every intelligent citizen who has pure and honest intentions to care for the will of the people enough to be in sympathy with this amendment and thereby letting the people of South Dakota know that the great mass of the people demand and expect something of this kind. There has not been a day since we have been here this long session that there has not come up to us letters and petitions requesting that we pass some such law or provision as this governing the election this fall. We know what the interests of the people are; we know what they expect and we are here to put ourselves upon record upon one side or the other.

Mr. Clough: There has been a great deal of honest, earnest, inquiring talk here this afternoon. One thing I think has been settled and that is this, that this Constitution has vested in it the authority, let me go back, I do not want to say vested authority. We have heard a great deal about the Omnibus Bill conferring authority upon us; gentlemen our American citizenship confers upon us all the authority and perogatives of American freemen. Our Omnibus Bill takes from us nearly all of them, it confers noth-

ing, it takes from us, and in the shading process it takes, some; it leaves few. I could not understand from any talk which we have heard since we have been in Convention how it is that our powers were taken from us, and a little something was left in their stead; the rest was conferred upon us. I think this is the difficulty, whether or no we have the power to regulate the elections of the officers to be elected this fall. It is certain that we have the power to protect the election for this Constitution. I want to say to you gentlemen, that there is a deep and earnest solicitude throughout the entire length and breadth of the Territory of Dakota that the election upon the Constitution and these amendments shall be a most honest and fair one. I have canvassed this Territory well from east to west, from north to south. Pardon me if I say that there is no solicitude concerning the election of the officers that shall be the nominees of the party. They believe that the parties in this Territory are able to handle all those issues either under the present existing rules or any that this Constitutional Convention may adopt; in other words that the men who pass the crisis of the Convention will be sure of their election. I say to you that the better men and the better women of the Territory are mighty solicitous for amendments to the Constitution; that the 24th amendment arouses the Farmers' Alliance solicitude; others are solicitous for the 25th. Now if we can protect the officers who are running because of the election that is provided for in this Omnibus Bill we ought to do so. I say, gentlemen, every man on this floor is for a time vested with the responsibility of lawyers. I begin to feel with all my reverence for lawyers that the biggest man on this floor cannot be above suspicion of legal quibbling over this proposition. Most of you have admitted that you have the right to do this thing and gentlemen, what we have the right to do this Territory will hold us responsible for doing; what we have the right to do if we do not do that we shall be recreant to our trust in the degree that we sleep upon our rights. If we have no right to hedge and limit the election of the officer, then let us resubmit this section and send it back and as other men have furnished testimony as to the characteristics of the voters of certain localities of our State, I am constrained to say this that during the few years that I have been in this Territory it seems to me that I have come in contact with the most magnificent matured manhood that I ever met.

It seems to me that I never met so high an aggregate of intelligence an and moral attributes as characterizes the general people of the State. We have heard the moral character of the voters of Dakota stigmatized, heard them called thugs and all that sort of things, yet I stand here and plead to you, if there is a cause for such an indictment to rest upon the voting population of our State,—my friends I stand tonight to plead with you to protect from such hands the Constitution that we are to submit. The amendments on Prohibition, the amendment on Minority Representation, and the rights of the citizens of 7, I believe, of Dakota's cities for an honest ballot for the capital location. I little thought that I would say very much on this question until I heard from the gentleman from Beadle; when I heard him criticise and stigmatize the voters of Dakota as he did, I appeal in the name of God for something to protect us against them. I said I will stand on this floor in defense for he knows Dakota as I have not known it; if he finds such indictments against the voters of Dakota. I have not found it; he as a lawyer and politician knows various people as I do not know them for I want to say to you that a minister only sees the better side of people; a man never shows his mean side to the preacher; he is afraid he may be called upon to bury him sometime and he wants him to give him a nice kind of a eulogy. I say you have heard him and I come to you to say in the name of this Constitution, dear to the people of this Territory, dear to its men and women,—I come to plead that you hedge it about; set guard over it and protect it and do not allow the men that he tells about to dominate or control the election upon the adoption of the Constitution. If they must have that privilege with the officers. If we have got them in Dakota—I do not believe that we have got many of them, but if you have them by the tens of thousands judging from what I have heard here today, if you have got them I do not believe many of this body yet believe this always must be. Take care of this Constitution. What can we do about it? Let us, if we cannot do anything else, re-submit it with instructions to the Schedule Committee: Apply this principal for in its working it deserves honorable mention and require of every member of this Convention and of this Territory to submit to it until we do find some other way. I appeal to you if there is scarcely a man who loves this commonwealth and these gentlemen

love it as just that; if there is scarcely a man that does not say, give us something in the nature of a reform of our ballot system. Now, gentlemen, in the name of the Omnibus Bill one thing more that is perfectly astonishing; we have heard of technicalities; one Committee to which I belong brought in a report in direct defiance of the Omnibus Bill. It was passed without a dissenting vote. The Constitution says that there shall be three times as many representatives as senators. We brought in 45 senators and one hundred and twenty-four representatives. It says that there shall be in each senatorial district, three representatives, but you have not done it. In some there is six or seven and in some there is only two—possibly in none less than two—I was going to say in some there was only one. Now, gentlemen, this standing on technicalities is altogether too thin a thing if you can protect my friends that are running for the Legislature, isn't it reasonable to suppose we can protect the Constitution in the proposition as true as we can protect the interests of Sioux Falls and these other places for the capital? I have heard several say within the last week, "Mr. Clough, give us a straight, honest ballot; that is the only thing to give us the fair show with all these other conflicting interests." Now, gentlemen of this Convention, in the interest of all these issues and good government give us these safeguards and this protection to the ballot box secured by this proposed amendment.

Mr. Van Buskirk: I came into this Convention as I have said once before today, thinking that we could adopt this or some similar amendment with the report of the Schedule Committee. The time was long before this question of the Australian system of voting began to be agitated in this Territory I had given it thought and felt interested in something of that character being done. The more I have listened to the arguments, the more carefully I have canvassed the Omnibus Bill, the more I have become convinced that we have no power whatever to introduce into this Constitution the provision of this amendment. There has been what possibly might be termed two lines of argument offered here. One is upon the power or this body to enact this amendment and the other has been upon the policy of such legislation. Have we the power? Now it is idle to undertake to argue for a moment before a logical mind that we have the power because as one gentleman stated today, that we shall go to work and do it regardless of power.

The policy of these arguments much of it, arises out of this condition of things. It is apparently the opinion of the gentleman who addressed this Convention we have a standing here as a body in the same position as the Legislature convened under the provisions of the Constitution having plenary power excepting so far as the power is limited by the operation of the Constitution for having no inhibition under the Constitution which the people of this Territory might adopt you might go to work and give a street railroad or gas works exclusive rights to lay their tracks or their mains and light the cities with gas. I say that there is inhibition and in the Constitution the Legislature may under the Constitution have plenary power and might confer just such privileges upon a corporation. We may just as well meet this question fairly, squarely as to dodge it. The first Legislature under the organic act this being a territory, has no legislative powers except what are provided, none at all. Gentlemen, a few years ago down South they disregarded the laws of this country; they got together and legislated common laws. They found they could not do it. They have not found a solitary thing that the Supreme Court said became law and binding. The Constitution and Laws of the United States control all of us throughout this broad land and as I have said in the Territory it is the law of the land until such time as Congress in its infinite wisdom otherwise shall say. If it pass a law authorizing us to organize a Territory and in its wisdom in the Organic Act of the Territory confers upon us the powers of the Legislature to that extent which they may say this Enabling Act does very well. I say the powers of the Legislature of the Territories is provided and has to be derived from the terms of the Organic Act precisely as the powers of the government of the United States is limited and defined by the Constitution of the United States. You will readily see in a moment that we have no plenary power, nor the State Legislature would not. That is derivative and when gentlemen insist here that we may reach out on our powers that is conferred upon us by act of Congress for the purpose of legislation and have provided for an election, this is a great misconception of the theory and history of purposes of our government. There is necessity for it you will see in a moment. Now then, where are we? We must go to this same very identical Organic Act, because our powers are derivative and we must find our powers we derive

by that act. We must look to this Omnibus Bill and its terms and provisions for the purpose of ascertaining what power we derive to transact business here in this Convention. Strictly and legally since we could not without we derived the power from the act of Congress conferring it upon us. Now, if the only question perceived in this is that of authority of the Convention by virtue of the act of Congress then they have the right to confer upon us just such limitations as they please and we are bound by them. Gentlemen, the intent generally is to a logical idea of what might be said in the argument by some other gentleman on the floor, to tear that down and therefore to disprove the assertion which they may make. I may attack argument which counsel in court might make and demonstrate the falsity of that. It does not demonstrate the correctness of the position I occupy before the court or public. It is clear that the whole line of argument here, and while I desire to accept the other theory, I cannot stand here with my knowledge which has been the accumulation of most a life-time and which is largely derived from forming legal deductions from evidence for a measure which I know cannot be sustained at all. Congress used that language understandingly, they used it in this light that it fell however within the authority of the Legislature to provide the amendment to be submitted to the vote of the people. Now, when they do that they go to work by requisition of the act and provide the formal ballot which shall be voted whether the people were to accept the amendment to the Constitution or not. Congress says we may fix the regulation in relation to it. We go to work and say a man might vote one way and then fix the form of his ballot and say if he votes the other way that is the form of his ballot and that he cannot cast it only one way and when Congress used that form with reference to the adoption of this Constitution, Congress meant by that simply this, that we might do as has been done by legislative bodies in other instances; so that when a man went to vote it should be intelligently voted and as the voter intended it to do. Otherwise there are gentlemen who might put in a vote for another man,—a different person than he intended to. With a different form of vote he actually would not be able to determine what those votes were. Now, if they had designed that we, here in this body, might provide regulations for that election, they would not have said we could provide regulations in reference to the Constitution,

but they would have said more had they intended more. They would have said that we might provide rules and regulations governing the election for the Constitution and State officers. They would not have stopped short of it. They would have said, you may vote upon this Constitution, you may at that time elect State officers and you may provide the necessary rules and regulations for that purpose,—for the purpose of controlling that election; why did they stop and say that we might provide regulations upon the question of the adoption of the Constitution; why did not they go further if they meant more. That is the difficulty in this whole thing. I wish it was otherwise, and if the time ever comes when I can go to the polls and help elect a man that will go to the Legislature and provide a measure giving us just the system desired in this amendment and which I have desired for years before it was adopted in this Territory, I will support that man gladly and if I can aid in preparing such a bill and carrying it through he can have my services.

Mr. Edgerton (of Davison): I understood that first gentleman from Codington to say this; that the Constitution provides that we should have three times the number of members that we have Senators and that every senatorial district should have three members and that we had violated the provision of the Enabling Act. I would like the first gentleman from Codington to call my attention to the section he has violated.

Mr. Clough: I have read that several times. Three times forty-five isn't it?

Mr. Edgerton: I belong to that hateful class—lawyers; but they are trained to speak in business like this with some degree of accuracy. "The number of members of the House of Representatives shall not be less than seventy-five nor more than one hundred and thirty-five. The number of members of the Senate shall not be less than twenty-five nor more than forty-five." "The sessions of this Legislature shall be bi-ennial except as otherwise provided in this Constitution."

Mr. Clough: There is another paragraph there.

Mr. Edgerton: That provides for that minority representation. I apprehend that the intelligence of the people next fall will say that it will never be a part of the Constitution.

Mr. Willis: Mr. President,—

The Chairman: The gentleman from Davison has the floor.

Mr. Willis: I rise to a point of order. Have not we a rule? I am sure we have against a showing of approval or disapproval upon this floor.

The Chairman: I guess there is something like that.

Mr. Edgerton: I felt a little sensitive as a member of this Convention when it was charged that we had plainly violated this Constitution that we have met here to frame,—or perfect rather. I knew it was my intention as declared on the first day of this Convention that we should not go beyond the Organic Act that limited the powers of this Convention. When it was declared here that we had plainly violated it I felt as if I would like to have the attention called to the section that we had violated. I admit this. The plain intention of the Constitution is that the number of members shall be three times the number of Senators; but I had yet to learn the fact there was any provision in the Constitution that there are senatorial districts that shall contain three members. There is no such provision that my attention has ever been called to; there is a provision that if the people of this State next fall adopt the Minority Representation and it becomes a part of the Constitution then thereafter there are districts that must be so formed. But I have no fear that that Minority Representation would be adopted. It at least, forms no part of the Constitution today.

Mr. Clough: My attention was called to that several times. I thought I was right, correct; and I think I am.

Mr. Huntley: As I listened to the learned Judge who spoke so feelingly upon this subject, interpreting the meaning of Congress, I thought he should have come from school of prophets instead of the legal profession. I do not understand how he may stand on this floor and interpret to us the meaning of Congress of the language which every one has perused the same as he has himself, unless it is through some authority like that of the prophets to which I believe he makes no claims.

I did not at first read those words of Congress in this Bill. It seems just as plain to me, very differently from what, from his interpretation of it, it seems to him. It looks to me clearly that we have the power to make regulations and rules, to pass ordinances, and what does ordinances mean but law, enactments, decrees,—

and if we come here together under the express authority of Congress to make decrees, what is that but that we have the power to make regulations to carry out all those acts of which we approve and which we here decree, and if we are empowered to make rules and regulations for the vote on the Constitution and its separate articles and if that same bill provides that this Convention may, it does not say that it shall but that it may, provide by ordinance for the election of State officers; what does it mean but that we may provide by regulations and rules how these said officers shall be elected. It is a mystery to me how these legal gentlemen differ from one another. We do not intend, and do not cast any reflection upon them. I believe the best talent among them have taken sides with those who think we have the full authority; therefore we preachers are not assuming anything when we boast of the legal talent on the floor. We think that we intend to urge and do urge upon this body that they put this ordinance in that Schedule. We have the power and I do not see how any question can arise upon it. Why, Sirs, the Committee in the Schedule have done it; they presume to do that very thing. They have the power to present it and recommend to us and they do it and recommend it. They present and recommend that we take the laws of the Territory and apply them to the election of State officers. Is there anything in the Omnibus Bill that directs that just those shall be slighted in such rules and regulations? Where do they find that? Will the gentleman please read the section in which it was found. They insist upon that being in there according to authority; very well. Having that authority they have the same authority for incorporating the same amendment which we bring; the same precisely. If they have the same authority for one they have the authority for the other and we insist that this is, as presented, is the belief of this body and is their will in regard to this matter. Those who are favoring this were taken rather aback this afternoon by the fears instilled by the legal friends who first opened this discussion. I think surely he ought to have come from the school of prophets, pronounced the cause which we have here insisted upon as a great crime, we propose to deprive somebody of his right to vote, to reject him if he goes to vote that ballot and don't in the form we prescribe; take away from him the dearest right of the American citizen. I

could not but admire the facility with which he pictured his fancies and imaginings.

In this amendment this Convention desires to protect and secure to the voter his rights, and the passing of such an ordinance would most effectually compass that end. What would be the effect if a man steps up and presents his ballot and refuses to vote in accordance with the rules prescribed? I will tell you what I would say: "Mr. Voter, if you don't want to vote in accordance with the regulations, you don't have to. There is no law compelling a man to vote." What would you do with a wild man who refuses to carry out this ordinance? You would tell him, "You don't have to vote". Any dunce that would refuse to carry out any ordinance that was here prescribed. Suppose Sioux Falls should have two Senators, six or seven Representatives, and suppose, at the election this fall, they elect five Senators and fifteen or twenty Representatives, what would you do about it? Well, Sir, I presume they would find some way to legally do it. Whatever way that is, this is the way I should put it. If Sioux Falls did not comply with the ordinance we had in regard to elections they could pronounce our action in the one case illegal and void and it might be pronounced void if they violated this ordinance if we pass it. I believe we have the authority to pass it; I cannot see it otherwise.

I notice this peculiar fact: Nearly every speaker who has opposed this measure, nearly every one of them has said it was desirable that we have such protection thrown around the ballot box; every one wanted it. Our Legislature wanted it last winter and they passed a resolution like it; it came into the hands of the Clerk and everybody wanted it; somebody wanted it so badly they got it away from the Clerk and it never got around anywhere else. Well, my friends, we want this just the same as if it had been seen and shall we, because some of these lawyers, who is less discreet and less talented, oppose some of those? Other lawyers, who understand the case better and are intent on doing the right thing shall those of us who are not lawyers sit in with the opposers of this measure, or shall we take part with those who want the ballot protected? I tell you let us pass this ordinance and if Sioux Falls, or Huron or any other town, whether they want the capital or not, do not obey that ordinance I tell you there will be a way provided

whereby they will suffer and they will wish they had obeyed the ordinance.

My friends, my memory goes back to a point four years ago when the Territory of Dakota elected a legal Constitutional Convention. That county that the honored President now represents, said it would not amount to anything; they did not need any delegate. They were not represented here. Well, they could not be compelled to be so what happened? They did not come here; they stayed at home and had no part in it; they never had a vote in passing this ordinance. That is what happened to them if they do not care enough for this part of the Schedule and Ordinance that we pass, should we adopt the amendment, loyally stand by its provisions, then they will be left out of the election, that is all. Let us do our duty, for it is right, and God is for the right. Let us not be ashamed.

I tell you that these lawyers that have been so full of fire against this measure will see to it that their votes are not lost when they have to. Some gentleman in the lobby, after the afternoon session, gentlemen of this town, men of ability, of reputation as lawyers; men interested here in the work and especially interested in their solicitude on the capital question, said to me they were both in favor of this measure, very much in favor of it. One of them was so much in favor of it he told me he was really a crank on this subject. Indeed there are here cranks here that turn the wrong way; some left handed cranks. These left-handed cranks that are now endeavoring to turn the machine backwards. We want to go ahead, no matter whether we are cranks or not, gentlemen. Let us do our duty faithfully and the end will justify us.

Mr. Cooper: I do not think there are many gentlemen on this floor this evening but would, if asked the question, declare he was in favor of a law of this kind if we have the power to enact it, and for the reason the public interests demand it, because of the nature of things in this Territory and in every State and Territory in this Union. We have been led to believe that there were dishonest men; that there are corrupt men; that there were men who would disregard the election laws of the coming State, and disregard the election laws of every State and Territory in the Union; that they were dishonest; that they were corruptionists; that they were sluggers and certainly that they were thugs. That was the reason

why I think every gentleman and every individual who has spoken upon this question has declared that if he had the right to enact this law and regulation of that kind that it would be wise, and just and politic thing to do. I believe that every gentleman upon this floor is in favor of protection of the ballot; is in favor of a true, pure, honest ballot and fair count. But we have acquired the information from the learned gentleman from Codington County, that none of the reasons which have been urged in opposition to the reputation of this kind, so we have learned from the learned gentleman but that were an insult upon the manhood and womanhood of this commonwealth; that there is nowhere in all this bright land of ours anything which savors of purity, anything that savors of honesty, and in the meanest language that he could employ. He not only assaulted and impugned the motives of every gentleman who spoke against this amendment, but even undertook to make an assault upon me. I say that if the position that he has taken is true, that nothing of the nature of purity and honesty exists among the people of this great State. He has proved beyond recall, beyond possibility to his own satisfaction I presume, certainly to the satisfaction of every gentleman upon this floor, that this amendment is an insult upon the manhood and womanhood of South Dakota. I say that if any gentleman believes that the position that he has taken is the only correct position for that gentleman upon this floor to take. But I believe that in the people of South Dakota and no gentleman believes more firmly than I do that nowhere upon God's green earth are the people more honest, conscientious, more pure in his manhood; and no people higher in this integrity than these are. I say I believe there are dishonest men in this State; I say I believe there are corrupt men in this State; that there is what is known as thugs in this State. I believe that this is the reason why, Mr. President, and gentlemen of this Convention, that an ordinance of this kind, a regulation of this kind, a law of this kind, should be passed, but there is a question back of it. First, have we the right to pass it? I do not always believe in the sentiment expressed by one gentleman upon this floor; I do not think he will when he stops to analyze it; I do not believe the end always justifies the means; I do not believe that beyond question one wrong thing in order to prevent another wrong thing from being done, can always be employed so the end justifies the means.

Now, as to the matter of disagreement between the lawyers among the members of this body, I say there is not a lawyer who has spoken upon this subject this afternoon or evening that has denied a single gentleman who has spoken upon it. I say there is no difference of opinion between the legal gentlemen who have spoken upon this proposition; they all agree that no judge of election would have the right to refuse a ballot provided by the laws of the Territory of Dakota, a ballot which would be legal under the laws of the Territory of Dakota. No judge of election would have the right to refuse; if he did, by the laws of this Territory, he is guilty of a crime. No gentleman who has spoken upon this question today has admitted or claimed that in his opinion a ballot which would be legal under the laws of this Territory but which would not comply with the laws of this amendment, would be an illegal ballot; would invalidate the election.

But they say, the gentlemen upon the other side, that we are in a condition of anarchy without the laws of this Territory. They need the law to protect them, because they say you cannot repeal the laws or banish the laws. The moment you do that you make it an illegal vote. I say that I do not believe that I can conscientiously vote for a thing of that kind. I believe in the law. That under the laws that a man that casts an illegal vote is guilty of a crime, and a judge of election who refuses to accept a legal ballot is guilty of a crime. A gentleman here today argues this question saying, "No judge or no jury". I cannot quote his language—"I do not believe any judge of election could be convicted for refusing to accept the ballot." I would not say that is correctly quoted, but I believe that is the substance of it. I have more faith in the honesty of the judges and juries of this great Territory than to say that they will deliberately break the laws of this coming State. I believe that if the law made a certain man guilty of a crime and the man that performed that act was placed on trial and it was plainly proven that he violated the laws of this Territory I believe that the honest manhood of Dakota would say that he should be punished. I say I do not believe because we are passing from Territorial condition to statehood,—I do not believe that we are in a condition of anarchy; I do not believe that we are absolutely without protection because the Enabling Act provides the laws now in existence shall stand and that they shall have full force and effect.

until superceded by future amendments by the Legislature. I would vote for an amendment of this kind if I thought we had the right to do it; for that reason I shall cast my vote in the negative. I will say again I do not believe that all men in this Territory are so pure and undefiled and have kept themselves so unspotted from the world that they do not need any laws. I do not believe that.

Mr. Clough: I rise to a question of privilege. There is no man that would rather be laughed at than I would if I make a mistake I am willing to acknowledge it. My eyes are not very sharp. I have looked at this Constitution, have read it a score of times and have talked about this rule seriously. I acknowledge that I never discovered that it was for the adoption of the Minority Report. I presume twenty have discussed. I acknowledge my mistake and I am glad to be enlightened. I confess that I made a mis-statement when upon the floor before and sincerely beg the pardon of the President of this Convention.

The Chairman: The Chair recommends to this Convention to endorse the sentiments that "honest confession is good for the soul." (Laughter.)

Mr. Dickinson: I want, upon the heel of the remark of the gentleman from Codington I like to get square arguments, I want, while he is upon the subject of Territorial law to call his attention to this article which we are considering, Article 7 of the Schedule submitted here. The section reads as follows: Section 7. The election provided for herein shall be under the provisions of the Constitution herewith submitted, and shall be conducted, in all respects, as elections are conducted under the general laws of the Territory of Dakota, except as herein provided. No mere technicalities or informalities, in the manner or form or election, or neglect of any officer to perform his duty with regard thereto, shall be deemed to vitiate or void the same, it being the true intent and object of this ordinance to ascertain and give effect to the true will of the people of the State of South Dakota, as expressed by their votes at the polls. I want to ask that the gentleman think upon that exception and the meaning of it. The Schedule Committee voted down this amendment in their meeting, they have taken occasion to say. I grant they might call attention to it simply to remove any doubts about why that being so, we have no right to anything except as herein provided. These articles will

be submitted but the same will be because the Territorial laws shall prevail in this election. We make the same provision exactly. I know there are minor exceptions here, they are small I grant, but that right which they hold to do here with small provisions paves the way for larger changes which are clear violations of the spirit of the Enabling Act.

Mr. Stroupe: I would like to speak to a question of privilege also, because I do not intend to speak very much of the report inasmuch as the Chair has allowed so many gentlemen to speak upon the question so often, I will speak for a moment.

This seems to have been a field day between the preachers and lawyers. I confess, although I am not one of the lawyers, the lawyers have the best of it. I came here in doubt this afternoon; I thought that the lawyers could make it clear to my mind as one of the fifty jurymen that we had a perfect right to ingraft this amendment into the Schedule, that I should vote for it because my friend from Codington says I am in favor and in sympathy with the spirit of this amendment. I want to say that I am ready to place myself upon record that I am in favor of Prohibition. No man worked in '85 harder than I did for it one year ago last fall for local option. I do not except any man. I do not expect any man will work any harder for it till next first day of October than I, be he preacher or sinner. I say that if there is a person here who will make an argument, not an enthusiastic talk, that is not very much of a legal argument, let us hear him. There are those who can talk in public of course, we can't blame them for it; they have been trained to it; they have been trained to preach, talk fire in their pulpits where no man dare, if he had a chance, to say anything against it. I want to begin with the first gentleman that spoke here to-night and say briefly, while his speech will do very well as a plea for prohibition it would not satisfy me very well as an argument on this proposition; the next gentleman from Day I admire. I want him to come into our county before October; I want him to come into our town and talk prohibition. Also the minister from Codington, I would like to have him come in there, but before he comes I would want him to get his speech committed in pretty good order so he won't make any bad breaks. I think Day and Beadle counties have to take it right and left; I think it is unjust. Mr. Cooper, I think, made one

of the best arguments that was made upon the floor this afternoon and of anyone tonight. I know I do not intend for one minute to be discourteous to anyone or reflect upon the motives of anyone as one or two speakers have passed, which he chooses to say reflect on.

I am certain that these gentlemen upon reflection will take it all back and might publish it even. This is a question of privilege. Gentlemen, I will stay here until morning if you want to talk; but my dear preachers if you do talk upon this question whether this amendment will be legal, whether we have the right to pass it and not that we would like to have it there. I don't believe that there is a man here but what would like to see it a law, but if the lawyers say that it cannot be legally passed, then let us do the next best thing; be on the safe side and vote according to the Territorial laws. This is my plea.

Mr. Willis: I am a lawyer,—

The Chairman: How do you spell that word? (Laughter).

Mr. Willis: I have had a course of law since I have been here. I might beg to insinuate a suggestion now that the last speaker did not stick to his text. I rise to defend nobody and observe to remark anything about anybody. I am going to studiously avoid any personal suggestions. I mean to say nothing contrary if I thought of it. I have done talking mere cold mysteries; it would confuse this Convention while confusion is now confounded. It now appears to me to begin to seem that certain lawyers of this body of long experience are very clear or rather quite clear or considerable clear,—that is about this question of power we have not got. But there are certain other lawyers of experience so far as I know I have only to make up my mind from observation I have had no experience with this, who, upon this question of power, decides that we have the power.

Two hours ago a man whom I judge to be one of the prominent lawyers of this city who is now in the lobby, in relation to, this matter made this remark that is about the question of this Convention having the authority under the Omnibus Bill to prescribe the conditions of the ballot next October, even to the extent of the adoption of this amendment. He had not the shadow of a doubt; his mind was as clear as a bell which is entirely clear; his manner was just as confident as it could be; he was just clear on that point. Many

lawyers disagree as to that subject, whether we have the power, this is the only question that is pertinent to be discussed. There are many men besides preachers who have given evidence of redundancy as it is true some preachers have. I am not a preacher; I am a lawyer. Well, I guess the citizens of the State to be, will weigh you fairly that we may, that this body may procrastinate as they will. Let me say that the people of South Dakota know their own minds and will weigh us by our actions upon this amendment. Why, it is very clear to me that there is a difference of opinion and that nobody knows exactly just what we ought to do. But with the popular pressure upon this point, which we know to be behind us, which some of us appear to be conscious of I am constrained to say that with this difference of opinion I am thoroughly dissatisfied. I think I was never more dissatisfied in my life. I am thoroughly dissatisfied and I am in favor of supporting the amendment. I am in favor of the amendment and I want the men of this body to know I shall vote for this amendment. I believe the majority ought to vote for the amendment.

Mr. Sterling: In the argument of this question I have had no thought whatever as far as my duty is concerned about the pressure that may be brought to bear from the outside. I consider that in questions of this kind that what people should think is the last thing that should influence a lawyer. I think I feel everything that recommends the desirability of such an amendment as this, perhaps as keenly as anybody, but I do not believe that it influences my judgment nor vote upon the question of power. Now, one of the arguments that has been adduced here as to the question of power has been satisfactory to my mind and I state now that in the discussion of this one question I have failed to hear anything that has been conclusive in my mind to even raise a doubt as to what I stated in my remarks this afternoon. I recognize this, that there are certain essential things about every election that no rules nor regulations can influence or set aside. The subject of the election, the time of the election, the place of the election, are all essential; and as they are fixed by laws we cannot interfere with them in any way whatever. The qualification of voters as prescribed by statutes are things you cannot interfere with. When it comes to rules and regulations concerning the conduct of an election I think we have the power to make them. Suppose,

gentlemen, that there was no election now except upon the Constitution to be passed and that the Enabling Act had not a single word about submitting it to the voters under such rules and regulations as the Convention, by ordinance, prescribes. I wonder if the Convention, then, might not have had the power to make any ruler or regulations had the Enabling Act been silent upon that subject. I say, if it was given the power to make the Constitution this would have carried with it the implied powers to make rules and regulations concerning the election by the people upon that Constitution. I say that in reference, now to the officers for which we may vote at the same time that we vote upon this Constitution and the amendments thereto. Remember, the Enabling Act says that we may make rules and regulations; it gives us the right in explicit terms, to make rules and regulations concerning this Constitution and the amendments in that same Enabling Act provides that at the same election we may vote for the officers necessary for a full state government and I say as the lawyers do, that under the ordinary rules and constructions of legal compositions and the statutory propositions that it follows as implied power that we have got the right to make rules and regulations concerning the election of officers in that same election. That we have to make rules and regulations concerning the Constitution and the amendments thereto.

This is an implied power; it is not an express power given in the terms of the Enabling Act itself. As I said this afternoon, I say now without any previous study upon the subject at all that the officers of election, themselves, and nobody seems to dispute the proposition, may for the preservation of order that extent and the purity of the ballot, make certain rules and regulations that shall govern the conduct of the election at this or that particular polling place.

The question is, is anybody deprived of the right to cast his honest vote? Gentlemen, when it comes to irregularity at that election the question of principle, it is not even raised, but it comes back to this: Has there been a fair and honest election? Have the electors had the right and been given the opportunity to cast a ballot at that particular election, and if so then the irregularities will not vitiate the election. That is the rule. What, does this amendment propose anything that disfranchises a man? Disfranchising! Listen, you gentlemen that harped upon that this

afternoon, instead of disfranchisement, taking it all in all, it is an invitation instead of a disfranchisement,—an invitation for them to go to the polls and vote as every man chooses to vote. That is what it is. And if there is anything that will make a man feel his independence as a voter, it is that he may be apart as this amendment provides, from the persuasive eloquence, unscrupulous interference of another when making or fixing his ballot. Entirely away from any outside influence. It secures, the entire intent and object of it is, to secure the entire independence of the voter. Disfranchising! When according to this amendment, he is provided with a ballot containing the name of every man who has been nominated by the party or by the wishes of a number of men outside of the party, in the county, in the legislative, and in the judicial district in which the man and the officer resides; he is furnished with that kind of a ballot, is there anything else about it. Why, he is not limited to the names upon it. Aside from where anyone can see him or intimidate him or persuade him; he can write any other name in there; he can place upon it any other name than that indicated in the ballot itself. Gentlemen, the more I think of this question and weigh it in all its bearings, it leads me in the belief, the more I think about it, the more I am convinced that this is a reasonable rule and regulation which we have the right to enforce. Enforce I say, and I do not use those words without some thought as to what they mean. I say this: I do not know that it would be ever resisted; I am inclined to think that it would not, but if the precinct entirely refuse to adopt the system I would believe this, that it would be no violation that the entire vote might be thrown out. I am not prepared to say that it would be done and that I would sanction any such thing should it be done. What might be the result, so far as our admission is concerned; so far as any action that President Harrison might take, is concerned, I would go to him with perfect confidence with the statement that this amendment had been put into the Schedule and Ordinance and that the voters had been required to comply with that and not voting in compliance with it, their vote was cast out. What would be the result? That amendment deprive you of your suffrage, that amendment deprive you of the right to exercise your right as an American voter and freeman,—an amendment like that which allows you to go apart by yourself in an apartment in the polling place and there vote as you choose,— that amendment which was designed to

secure the purity of the ballot box,—does that deprive you of your vote in this or that particular precinct? I say, gentlemen, when there is this attempt to secure purity at the election, done manfully and carefully, taking into consideration the question that we had that to decide in this election, that no jot or tittle of our right to be admitted will be effected by our adding this amendment to the Schedule and Ordinance requiring that it be one of the conditions of the election next October.

Mr. Davies: I ask the indulgence of this Convention for one moment to discuss the question a little. We are met this evening to settle one point; this Convention recognizes that to be a legal point and as one of the large majority of the members present I look to the legal fraternity to settle this question. There is no doubt but what the majority of the members here desires to carry this through if the way is clear for this Convention to do so. This is not a Convention of the ministers and preachers here. I believe it is equally dear to every attorney in this room and for that very reason I cannot conscientiously allow this Convention to close without putting my voice as attorney in favor of this amendment. I will say, gentlemen of this Convention, you who are not lawyers, that you have no business to expect two lawyers to agree on anything. When we, every one of us, have talked about this subject, when we sitting here have heard the presentation of the views of the different members, when you have talked over all those that you deem to be law and argument and reason, then bring your own common sense of duty and of right and when you come to vote on this, you have the power here to say that this shall be. There are not attorneys enough on this floor to make a show. I undertake to say that at least half of the lawyers in this room are in favor of this amendment. Now, come right back to the question.

This afternoon some questions were asked. I do not know but what I had better answer a few of them right here.

Suppose a man wishes to vote according to the old methods, after the new method has been introduced. What would be the result? The men authorized, ordained if you please, by the Congress of the United States to this Convention, those men ordained to attend to that matter, will attend to it. How? Just like this: Just as your little slip tells you, he must come and deposit his ballot in secret and if he does not prefer to do that he has not got to do that but his vote will not be counted. Suppose he goes to law about

it; let him go. Will that vitiate this election? The very fact that the man said, I will not submit to the majority and will vote, that I will insist about voting my way and go to law about it; will that vitiate the result of the election? Is there a lawyer here tonight that will say for one moment that this matter has anything whatever to do with it? Talk about this "I won't do it". I was asked by my wife where I was going to preach next Sunday. Yes, that's a fact. Now, I can't say today that I intend to lie out of it. The highest tribunal in this land,—the legislative tribunal, the Congress of the United States—not the Constitution of Dakota but the Congress of the United States through the Enabling Act, has provided that elections will be held next October in this Territory. It is provided that certain things shall come up for submission to the people when it is also provided that this Convention shall prepare itself for admission, so far the Constitution of Dakota has nothing to do with it. The laws of the Territory of Dakota, only as far as they relate to the general subject, has nothing to do with the particular method of how we shall vote. Whether there shall be one judge or two judges. The present law existing in the Territory of Dakota has nothing for general and special elections provided for, has nothing to do with this, because this is a special election organized by Congress of the United States, and that same authority has vested in us, power to prepare all the ways, the means of doing this. I think this word "ordinance" misleads some of us. When I was a little boy, about so high (indicating about three feet) my teacher used to put me through elocutionary and elocutionary drill. I remember it ran something like this: "They did not legislate, they did not enact, they ordained that the people of the United States shall be free." The Congress of this United States has permitted us to ordain that we shall have a clear, pure election. For one, I shall vote for this amendment.

Mr. Williams: I find one objection to this section as it stands. I believe that with that word out and two other words substituted that objection will be obviated. These words are these. I find that this ordinance does attempt to legislate; it attempts to repeal certain of the laws of the Territory of Dakota. Now, for one, I want to get right on that. Section 7 reads: "The election provided for herein shall be under the provisions of the Constitution herewith submitted and shall be conducted in all respects as elections are conducted under the general laws of the Territory of

Dakota, except as herein provided." That word "except"; I think we had better change that. Why? For this reason; this section says that this election shall be according to the laws of the Territory of Dakota EXCEPT as herein provided. Let us change that and instead of the words "Except as herein provided", not repeal any law, but allow the law to stand and then add these words "and regulate it."

Mr. Fellows: I desire to submit one or two thoughts in connection with this very important question before the Convention. I will say right here that I shall not attempt any flights of oratory. I won't soar very far from the issue that is before the Convention. The question is one of such vital importance that it should receive the careful consideration and unbiased consideration of every delegate here. The question whether we are exceeding, in passing the amendment that is proposed, the power that is vested in this Convention is one of much importance. Upon it depend out perpetuity and usefulness as a Convention. I have no doubt that nearly every delegate in the Convention would be in favor of that amendment if, in his judgment it was proper and was within the power of this Convention to pass it; therefore I shall address the remarks that I make solely to that question of the power of this Convention.

In the first place, it is conceded here by everybody those who favor the amendment and those who oppose it that the only power which the Convention has is the limited powers which the Omnibus Bill gives us. This Convention sits here without plenary power, but such power as is given by Congress. If this Convention has the power given it by the Omnibus Bill to make laws, provide laws and enforce these laws, then it has the power to do just what we are attempting to do here in this provision. But, if on the other hand there is any question, I say any tangible question, if the standing it has got is subject to strict construction, if there is any question of its giving the power to this Convention to become a legislative body, to be a law-making body, to be a law-passing body, then certainly this amendment can be passed and should be passed.

Now, we will have an election next October; the laws which have, by the provisions of this act and by the Constitution will be, at that time in full force and operation; and the election laws of this Territory will be in operation in every city and town and hamlet in this State of Dakota,—or this will be at that time the Territory of Dakota,—they will be at that time the Territory of Dakota,—

they will be in full force and operation as they are in force by the courts. Now then, can you, acting here under the authority that is given you by this Omnibus Bill, under the limited authority that you obtain here, together in this Convention, do anything that will overthrow the force of those laws? That is the question confronting this Convention; because if you can do something that will repeal them by express enactment or implication, certainly these laws will be in full force and effect. What will these judges of election do on that day? They will have to sign a solemn oath, they will have to act under the laws of the Territory that are in force. The first thing that a man does before he commences to act as Judge of election, he has to swear that he will, to the best of his understanding and ability, perform the duites of his office in accordance to the law. In accordance to what law? According to the law of the Territory of Dakota, that is in force.

You attempt to say here in this ordinance that a man shall not observe the oath that he has taken; you attempt to say here that he shall not follow the laws of the Territory of Dakota that he has sworn he will follow; that he will not administer the laws of this Territory that he has sworn he will administer. You are changing all that. You provide entirely different methods; you are making a provision here in this act, I call your attention to it gentlemen, and it is this: That in regard to marking the tickets that he will cast out the ballots that are not marked in a particular way. I tel' you, under the laws of this Territory that are in force and will be in force on that day that the judges of election cannot legally no anything of that kind. I make the application personally myself,—I go up to the polls on election day with a ticket that expresses just what I want expressed there. It is in conformity with this Schedule and Ordinance except that it does not conform with this amendment. Suppose they refuse to accept my vote? What justification has he to show? Suppose we follow it a little further. I commence action against him for judgment for damage. He has set up the justification and defense. What is the justification and defence going to be? Suppose we carry it further; suppose the judges of the election presented and filed a large number of ballots cast there in accordance to the ordinance you are attempting to pass here that are not in exact conformity to it. Must they be thrown out in conformity with that section of the amendment? What is the effect of that upon the election? Have those judges

of election the right to discard the votes that perhaps were placed there in the ballot box, that expressed their will and intention without any defense of that kind.

Now, I do not believe there is anything of that kind. I am in favor of purity in election; I would like to see all the safeguards thrown around the polls that can be thrown around them. I do not believe there is any such burning necessity existing at this time to take the chances of this experiment we are taking here if we adopt the amendment of this kind. For, the question of power is in doubt, if there is a question of power at all and there is at least a question in the minds of this Convention here if there is a question in regard to this "can we, friends, considering the importance of this election, considering the fact that statehood, perhaps, of South Dakota depends upon the solution of this question. Can we afford to take any chances,—to say that we will take this procedure when there is doubt as to its being the right course; when by taking the course that has been pursued in this Territory year after year to the general satisfaction of this people." We are standing upon grounds that are perfectly safe and solid with no question about the result of this.

(Calls of "Question, question" from different parts of the room.)

Mr. Huntley: I want to ask the gentleman how he reads the first sentence in that article to which this amendment is offered, that the election provided for herein shall be conducted in all respects as elections are conducted under the general laws of the Territory of Dakota,—Article 7' The Committee whose report this amendment is made to, this Committee have assumed that they had authority to dictate.

Mr. Hole: I suggest that the gentleman should not answer his own question. That question was asked awhile ago; I do not wish to enter into this discussion; I would answer that question because it has not been answered. This question has been before the Committee and has had considerable attention. We are free to say that where there was any possible doubt we have taken the safe side, deeming it the best course to pursue.

Mr. Lee: I will not detain this Convention long. I wish to suggest that there is a moral side and a legal side to all questions. I have a mortgage on my neighbor's cow, their only cow. On the legal side I could go and foreclose that mortgage and take that cow. Perhaps it is the only cow of a widow with little children. When I

take the cow away they have got scarcely nothing else to live upon. Such an action outrages the moral side of the question. I believe my constituency are mostly of excellent morals and good men. The majority of the voters are in favor of this amendment and all taxpayers are. We are about to cast the greatest vote ever cast. And more men will show up then any other time that we will ever have seen in South Dakota. I have to stand here for the lawyers and for the preachers. I was made a lawyer in 1857, a preacher in 1860. The lawyer part of me is a little older than the preacher. I tell you because I want the farmers that own the real soil, and the merchant and the men who pay the taxes to have the right to say how this thing shall be. I want them to cast the vote that will carry. I do not want the dead beat and dude and loafer and that beautiful class to be shipped in here and boarded until after election. They have got men who will come here from Iowa, Nebraska, Minnesota and from Canada, that if you will pay their board until they have stayed long enough to vote they will come in hoards. We want to make them pay taxes before they vote. The old pioneers that came here and lived and fought and got their farms and families and children and their business and trade and profession, who ought to run this government. I say this is right. It is just and it will do no harm. In my town, but a few days ago, there were four farmers about four miles from town. Well, I went out and got them to vote; but you do not have any trouble to get them out to vote and vote in the city and double our taxes. Men who do not own a foot of land, but they are voters and they out-vote us in the city and double up our taxes before we know anything about it. I tell you, all my life time, this idea has been growing with my years that there should be a change in our election laws. I have been judge of election in my time; I have said "We won't allow you to come into this voting room at all; stand outside and put your vote in through the window." They had to do it and I did not hear of any man being disfranchised either. These circumstances alter cases. I tell you I am going to vote for this amendment. This is the preacher side of me. I believe it is right.

Now, in regard to the lawyer side I have some little doubts but they are not very strong. I believe it will be tried in less than ten years in every state in the Union. I believe the time in our history as a Territory is ripe for this trial now. In standing before a jury defending a man charged with crime, I say: "Gentlemen of

the jury, if you have any reasonable doubts that my client committed this crime, you will have cause to clear him. You had better let a thousand crimes go unpunished than kill an innocent man. That is law; I shall give this amendment the benefit of the doubt and vote for it in this Convention.

Mr. Corson: I do not desire to take the time of this Convention to discuss the various phases of this subject that have been touched upon in this debate. But one thing seems to me Mr. President, is very apparent, and that is, that there is a safe course in this matter which can be pursued and a course that can be pursued that is not so safe. It would seem from the discussion this afternoon that there is grave doubts about the right of the Convention to pass this amendment; to make changes in the law applicable to this election the ensuing fall. Now, like the gentleman from Spink, Mr. President, I have been here in the Territory of Dakota for many years. I have worked hard and long for statehood. I do not feel, Sir, like endangering that at this time by passing this amendment and placing upon this election some restrictions about which there is grave doubts as it seems to me that at this time we can ill afford to do that. This is a matter of grave importance; this matter of this election and the returns, etc. are to go before the President of the United States and if it should, in his opinion, turn out that this was an illegal amendment and the provisions of it were illegal then, there would have been no election of this Constitution and the whole thing would fall to the ground and we would commence new again. I ask, gentlemen, if we can afford to, at this time, take never so remote a chance of a disasterous termination of our hopes.

I have lived in Dakota twelve years and I have never seen such a state of corruption in regard to voting as has been proclaimed here. I hear that we have the finest population of the American education that there is in the world; that we have forty thousand farmers, intelligent, honest and independent. I know we have ten thousand miners that are equally intelligent and equally honest; I know we have twenty to thirty thousand mechanics that are honest and disposed to go to the election places and exercise their right gravely and like honorable men. I do not know where these men are that are so corrupt. I believe nobody intentionally would do such a thing, but I do believe the fair fame of Dakota has been slandered

this afternoon by having it appear that there is set corruption in our elections in Dakota.

I believe it is doing an injustice to her people to assume to presume that there was such election frauds practiced in our Territorial elections. Our laws and penalties are very severe in connection with our election laws as it now stands. I understand it is conceded by all parties that they can be enforced and will be enforced next fall; while there is no power to enforce the provisions of this amendment. I express no opinion one way or the other; I simp'y say this: That there is sufficient doubt about the matter, and there is sufficient doubt about the result that might ensue that makes it a part of wisdom to pause here on the threshold and see whether we had not better forego the matter of this amendment and take the absolutely safe course; take a course about which we will have no doubts from this time until we are a State. Hence, Mr. President, I shall vote against this amendment and as it has been said and perhaps repeated very often, I presume, there is no gentleman here that is not in favor of a good election law; not in favor of having thrown around the election all the safe-guards possible, but as has been said here, we are not a legislative body, this is a matter for another body to consider.

Let us then pursue the course that is marked out for us; that is a safe course, and not venture upon any experiments of this kind; it might be a costly experiment for us to make.

Mr. Peck: I do not propose to take any length of time, but simply to refute a few statements that have been made. I agreed in the first place to explain but a few remarks that I thought was misunderstood. In the first place I am one of those who came in here to be told by the lawyers just exactly what my duties are. I have read and practiced law enough to satisfy myself that I cannot understand law to my own satisfaction. I came here after giving the Omnibus Bill my full consideration to satisfy myself as to the fact of our right. I have no doubt at all or any question but what we have got to make the rules and regulations and ordinances whether you could adopt the Territorial law or other law, to control the coming election. One of the two we have got to do.

I think there is a mistaken idea that if we adopt nothing that the Territorial law will govern the first election. I do not believe that there will be any law at all if we do so. For that, only as we provide one for this election. I believe that the Committee thoroughly

understood that; that they thought that we have got to get it into the ordinance to have a law and that they adopted the election law of the Territory.

Now, what must we seek to do with these few rules? Just enough to cover two things. I do not want any election law that is foul, fraud and besmirched with unbecoming procedure that has been practiced for a long time. That is fraudulent in the printing of ballots.

We simply provide first, for what? We simply deal with two things. We provide first for the printing of ballots by authority and in order to do that we have got to have a common and general method of nominating Second, to provide for certain machinery to deliver these ballots, first to the persons who have the right to go with them unmolested and put them into the ballot box. If this is any infringement upon any person's rights I fail to see it. I have studied very carefully the Australian election laws. I say there can be no distortion of this thing into an infringement of any person's rights. Having arrived at that conclusion that we have the right, without doubt, to pass this law the next question was as to its expediency. My own opinion is, that we should retain the old law as far as we could and get an ordinance to free and purify the ballot. The real simple phases of all the election laws of Dakota shall govern this election except just simply as to the printing of the ballots by authority and stopping fraud and abuse to the ballot system of distributing and handing them to the several persons as I said before, who are entitled to receive these ballots and protect the voter in the exercise of his rights.

Mr. VanBuskirk: If we may legislate to the extent as provided by the rules and regulations advanced by this amendment, may not we make that penal? If a man evades the provisions of this amendment it must follow if we may pass such a regulation as contemplated by this amendment may not we make it penal if a man violates the provisions of this amendment? I simply say that there are severe penalties under Territorial laws that require that we protect these rules.

The Chairman: The question before the Convention is Section 7 of the report of the Committee on Schedule and Ordinance. To that the gentleman from Hamlin moves this amendment.

Mr. Peck: He seeks to amend Section 7.

The Chairman: Section 7 is before the Convention. He asks to amend Section 7.

Mr. Williams: We have not moved the adoption of Section 7.

The Chairman: Section 7 of the report of the Committee on Schedule and Ordinance is before the Convention and to that the gentleman from Hamlin moves that the following be attached as amendment to Section 7.

RULES REGULATING THE ELECTION TO BE HELD UNDER THE AUTHORITY OF THE ENABLING ACT FOR THE ADOPTION OR REJECTION OF THE CONSTITUTION AND THE ARTICLES SEPARATELY SUBMITTED THEREWITH AND THE REPRESENTATIVES IN CONGRESS; ALSO STATE AND JUDICIAL OFFICERS FOR SOUTH DAKOTA.

SECTION 1. That at the election to be held on the first day of October, 1889, the election laws now in force in the Territory of Dakota shall apply to and govern such election except as herein-after specially provided.

SEC. 2. Nominations for State officers, Representatives in Congress and Judges of the Supreme Court shall be made by any State convention and certified to by the Chairman and Secretary of such convention, according to form number one (1) herein-after provided, or by any three hundred (300) legal voters in South Dakota attaching their names to a paper nominating candidates and filing the same with the Territorial Secretary.

SEC. 3. Nominations for members of the State Legislature, Judges of the Circuit Court and Judges of the County Courts, shall be made by any convention held in legislative and judicial districts or county for which any such officer is to be elected, and certified to by the Chairman and Secretary, according to form No. 2 herein-after prescribed, or by any one hundred legal voters of any legislative or judicial district or county, by attaching their names to a paper nominating such officers, and filing the same with the county Clerk or County Auditor to which such nominations refer.

SEC. 4. All certificates of nominations and nominating papers provided for in Sec. Two (2) shall be filed with the Territorial Secretary by the fifteenth day of September, and all those provided for in Section Three (3) shall be filed with the County Clerk or County Auditor by the twentieth day of September, 1889, and no certificate of nomination or nominating papers shall be acted upon, except accompanied with the consent in writing of the person or persons therein nominated, provided that in case of death or resignation, the authority making such nomination shall be permitted to fill such vacancy by a new nomination.

SEC. 5. The Territorial Secretary, on the receipt by him of the nominating papers hereinbefore mentioned, shall forthwith transmit true copies of the same to the County Clerks or County Auditors of the several counties in South Dakota.

SEC. 6. The County Clerk or County Auditor shall, after the expiration of the time for receiving the nominating papers, forthwith cause to be printed such a number of ballot papers as will be sufficient for the purpose of the election, and the number necessary for each polling place shall be bound or stitched in a book of convenient form, and the County Clerk or County Auditor shall cause to be printed in English, in large type, on cards, instructions for the guidance of voters, in preparing their ballot paper; such Clerk or Auditor shall furnish ten (10) copies of such instructions to the Judges of each election precinct, and said Judges shall cause them to be posted both inside and outside of the polling place, and said County Clerk or County Auditor shall, as provided by law, cause to be delivered to the proper Judges of election the ballot box and all poll books and returns now by law required or by this ordinance required to conduct and complete the election, also the ballot papers, at least two (2) days before polling the vote; and shall cause to be published in each newspaper in the county a true copy of the ballot paper and card of instructions, said publication to be in the last issue of said papers before the day of voting.

SEC. 7. Every ballot paper shall contain the names of all candidates for Representatives in Congress, State, and Judicial officers, and members of the Legislature, and the name of the political party to which each candidate belongs; also the form of the ballot for the adoption or rejection of the Constitution and the articles separately submitted therewith, as provided in this ordinance.

SEC. 8. Each polling place shall be furnished with a sufficient number of compartments, in which the voter, screened from observation, shall mark his ballot paper, and a guard rail so constructed that only persons within the rail can approach within ten (10) feet of the ballot box, and it shall be the duty of judges of election in each polling place to see that a sufficient number of such places be provided and shall appoint a person to guard the entrance to such compartments and he shall be paid the same as Judges of election.

SEC. 9. The voters admitted one at a time for each compartment where the poll is held shall declare his name, and when permitted by the Judges to vote his name shall be entered on the voter's list, and he shall receive from one of the Judges of election a ballot paper on the back of which initials of one of the Judges of election shall be so placed that when the ballot paper is folded they can be seen without opening it, and the Judges of election shall instruct him how to mark his ballot paper.

SEC. 10. The voter, on receiving his ballot paper, shall forthwith proceed to one of the compartments of the polling station and there without undue delay, not exceeding five minutes, mark his ballot paper by putting a cross (X) in the space to the right-hand side of the name of the person for whom he desires to vote and if he desires to vote for any person whose name is not on his ballot paper he may write or paste on his ballot paper the name of the

person for whom he desires to vote, and shall then fold up his ballot paper so that the initials on the back can be seen without opening, and hand it to one of the Judges who shall, without opening it, ascertain that the initials are on it and that it is the same ballot paper given to the voter, and shall then place it in the ballot box and the voter shall quit the polling compartment as soon as his ballot paper has been put in the ballot box.

SEC. 11. The Judges of election on application of any voter who is unable to vote in the manner provided, shall assist such other by marking his ballot paper in the manner desired by such voter in the presence of the persons permitted to be in the compartment occupied by the Judges and no others, and shall place such ballot paper in the ballot box, and when judges of election shall not understand the language spoken by the voter claiming to vote, they shall swear an interpreter, who shall be the means of communication between them and the voter with reference to all matters required to enable such voter to vote.

SEC. 12. A voter who has inadvertently dealt with the ballot paper given him in such manner that it cannot be conveniently used, may, on delivering the same to the Judges, obtain another ballot paper in place of that delivered up.

SEC. 13. Any voter refusing to take the oath or affirmation of qualification as required by law, when requested to do so, shall not receive a ballot paper, or be permitted to vote.

SEC. 14. No person shall be allowed to take his ballot paper out of the polling place, nor, except as in the case provided for by Section Eleven (11), to show it when marked to any person so as to allow the name of the candidate for whom he has voted to be known, and any voter who violates or refuses to comply with this ordinance shall not be permitted to vote.

SEC. 15. In addition to the Judges and Clerks of election, one Watcher at each polling precinct for each political party presenting a candidate or candidates for the suffrage of the voters and no others shall be permitted to be in the compartment occupied by the Judges, Clerks and Watcher shall, before entering upon their respective duties take and subscribe to the following oath or affirmation:

— I, John Jones, do solemnly swear (or affirm) that I will keep secret all the names of the candidates for whom any voter may have marked his ballot paper in my presence at this election, so help me God.

SIGNED:

Sworn (or affirmed) before me at this first day of October, 1889.

J. J.

Justice of the Peace or Judge of Election.

SEC. 16. Immediately on the close of the poll the Judges in the presence of the Clerks of election and such of the watchers and

voters as desire to be present, shall open the ballot box and proceed to count the number of votes for each candidate; in doing so, they shall reject all ballot papers which have not been supplied by them as Judges of said election, all ballots by which more candidates have been voted for than there are officers to be elected; also those upon which there are any writing or mark by which the voter can be identified; all the ballots voted and counted, and those rejected, those spoiled and those unused, shall be put into separate envelopes, and all these parcels shall be endorsed so as to indicate their contents, and be placed in the ballot box and a return of the result of the election at the polling precinct shall be made to the County Clerk or County Auditor, as now required by law for the election of members of the Territorial Legislature.

SEC. 17. All expenses incurred under these rules to be a charge against the county and audited and paid as other claims against the county.

The Chairman: Is the Convention ready for the question?

Calls of question from different portions of the house.

The Chairman: Gentlemen as your names are called, those favoring the adding of this proposed amendment to Section 7 of the report of the Committee on Schedule and Ordinance will answer yes; and those opposed will answer no.

AYES—Messrs. Anderson, Atkinson, Berdahl, Clough, Davies, Dickinson, Downing, Eddy, Gifford, Goddard, Hall, Hartley, Huntly, Lee, Matson, Murphy, Peck, Ramsey, Spooner, Sterling, Wescott, Wheeler, Willis, Williams, Williamson, Wood of Spink, Young.—(27).

NOES—Messrs. Boucher, Buechler, Coats, Cook, Cooper, Corson, Couchman, Craig, Diefendorf, Edgerton of Yankton, Fellows, Fowles, Henninger, Hole, Houlton, Humphrey, Jolley, Kimball, Lyons, McFarland, O'Brien, Ringsrud, Scollard, Sherwood, Stoddard, Smith, Stroupe, Thompson, Van Buskirk, Van Eps, Van Tassel, Whitlock, Zitka, Mr. President.—(34).

The Chairman: There are twenty-seven (27) ayes and thirty-four (34) noes, so the amendment is lost.

Mr. Williams: I move to amend Section 7 by striking out the word "except" where the same occurs in the fourth line of said section and insert in lieu thereof the words "and Rules and Regulations".

This motion did not receive a second.

Mr. Hartley: I move that Section 7 be adopted.

Mr. Humphrey: I move that the word "annul" be substituted for the word "avoid" where it occurs in Section 7.

Motion received a second.

The Chairman: The gentleman from Faulk moves to substitute the word "annul" in line seven for the word "avoid".

Those favoring the motion will say aye; the noes appear to have it; the noes have it. The question before the Convention is upon Section 7.

The Chairman: Those of the opinion that the motion to adopt Section Seven of the report of the Committee on Schedule and Ordinance prevail say aye; those of the contrary opinion say no. The ayes have it. Section 7 is adopted.

Mr. Williams: As it is a manifestation of the members of this Convention to leave no doubt as to the rules, I move that further consideration of this report be postponed until Thursday of next week.

Motion received a second.

The Chairman: It is moved and seconded that further consideration of this report be postponed until next week, Thursday. Are you ready for the question?

Mr. Hole: Gentlemen; I trust you will not take that action at the present time as this report has been in your hands now twelve hours and here will not be a time in the history of this Convention when we have so full a representation of the delegation as we now have. A large number of those here tonight intend to leave tomorrow morning. I think that I will offer a substitute to the gentleman's motion that we adopt the balance of the report of the Committee on Schedule and Ordinance.

This motion received a second.

The Chairman: The gentleman from Beadle moves as an amendment that the Convention do now adopt the remainder of the report of the Committee on Schedule and Ordinance. Are you ready for the question?

Mr. Williams: I would move an amendment to that amendment that Section 19 of the report be amended so as to read as follows: "The officers provided for in this ordinance, to be elected on October 1st, A. D., 1889, shall continue to hold and exercise the duties of their respective offices until their respective successors are elected and qualified under and by virtue of this Constitution and laws passed in pursuance thereto.

The Chairman: A motion was made to postpone further consideration of this report until next Thursday; an amendment was offered that the balance of the report be adopted. Now an amend-

ment was made to the amendment that Section 19 be amended, striking out Section 19 as it appears and inserting in lieu thereof the words: "The officers provided for in this ordinance to be elected October first, A. D., 1889, shall continue to hold and exercise the duties of their respective offices until their respective successors are elected and qualified under and by virtue of this Constitution and laws passed in pursuance thereto."

Mr. Williams: In drawing this hastily and stating my motion I have not yet presented what I mean; that is to substitute for the first section that part of the section that designates officers is not to be touched,—that is what I mean to say. It will only be the first paragraph; it will end at the word "follows". I want to strike that part of it out.

Mr. Hole: I will say that that matter has been extensively discussed by the Committee and that we have heard the various arguments on that and that they come to a unanimous conclusion that that would not do to pass it.

Section 7 provides that this election is under this Constitution.

Mr. Williams: I dislike very much to worry this Convention, but I cannot let that pass without raising this objection and if I have not expressed all that I intended in offering it, it will come now in what I want to say. I want to read that section which provides the tenure of office of all officers. "The tenure of all officers, whose election is provided for in this Schedule, on the first day of October, A. D., 1889, shall be as follows:

The Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Public Instruction, Commissioner of School and Public Lands, Judges of the County Courts, shall hold their respective offices until the first Tuesday after the first Monday in January, A. D., 1892, at twelve o'clock M., and until their successors are elected and qualified."

"The Judges of the Supreme Court and Circuit Courts, shall hold their offices until the first Tuesday after the first Monday in January, A. D. 1894, at twelve o'clock M., and until their successors are elected and qualified; subject to the provisions of Section 26, of Article V, of the Constitution." Now, to make my objection known I will next read the last paragraph and my objection to that is this; that this Convention, by ordinance attempts to prescribe the tenure of the officers provided for in this Constitution.

"The terms of office of the members of the Legislature, elected

at the first election held under the provisions of this Constitution, shall expire on the first Tuesday, after the first Monday in January, one thousand eight hundred and ninety-two. (1892)".

This does not prescribe the term of office of those to be elected in October 1889; but instead of describing the tenure of office of the officers elected in 1889 it prescribes the term of office of the first officers elected under the Constitution. It cannot be earlier than 1890 unless the Legislature prescribes. I further say that in prescribing that these officers mentioned in the second paragraph shall hold until the first Monday in January, 1892. It extends the term of office of these officers to be elected at the election the first of October beyond the time prescribed by the Constitution; extends the term of the member of the Supreme Court and County Court,—extends the time of their office till January 1894. I take it that it is in direct opposition and contrary to the purposes of this Convention by ordinance prescribed. That is the business of the Convention to prescribe the term of office of the officers elected in this election in 1889 and no other, and that they cannot fill the prescribed term of their office for any other election a long length of time, that the time which the tenure of office of the officers to be elected under this Constitution shall begin. In one place in the Constitution it provides that the term of office of the first Legislature shall commence the first Tuesday after the second Monday of January following their election. The Constitution provides that they shall be elected at the first general election under the provisions of the Constitution which will be in November 1890. Their term of office will commence the first Tuesday after the second Monday of January, 1891. I think when this amendment is fully understood by the members of the Convention they will see the force of it. The gentleman who framed this particular ordinance admitted to me that it was not right, but did not express his opinion.

The Chairman: The question is upon the amendment offered to the amendment of the gentleman from Bon Homme. Is the Convention ready for the question?

Mr. Stroupe: This was carefully considered and finally voted down in the Committee.

Mr. Williams: I want to explain the intent of that amendment. This amendment provides this: That the officers elected the first day of October 1889 will continue to hold their office; their

term of office will expire the first of January 1891, when those rules will hold until the election of 1890.

The Chairman: The question is upon the amendment.

Mr. Boucher: With all due deference to the gentlemen of the Committee I believe that this Schedule had ought to provide that the officers elected this fall ought to hold until the general election. The Constitution undoubtedly intends that our general elections in this State shall be bi-ennial. In fact the effect of adoption of the Schedule as it now stands will result that the general elections will occur every year. I do not believe it would be radically wrong; I do not believe it would be contrary to the spirit of the Constitution if this Schedule should provide for the election of officers that they act until their successors are elected and qualified at the next general election. I hope the amendment will be adopted.

Mr. Hole: To explain that further I will say that this has been before the Committee and argued by the various lawyers and submitted, and the lawyers reconsidered it in Committee and they have decided it was not best.

We tried our best to get that through and we worked to get that in but that is our judgment and if there was to be a change I would not want it to be at my recommendation. I am satisfied that we do not want it.

Mr. Willis: I am sure the people are nearly a unit in this; that it is the temper and sentiment of the people not to have an election every year. They want this business bi-ennial. I am in favor of the amendment.

The Chairman: Is the Convention ready for the question? Those in favor of the adoption of the amendment offered by the gentleman from Bon Homme, say aye; those opposed say no. The noes appear to have it; the noes have it and the amendment is lost.

Mr. Humphrey: I move that the section be amended by striking out everything after the words "shall be" in the third line of the first paragraph and inserting instead the words "shall be as provided in the Constitution."

The Chairman: The third line of the second paragraph?

Mr. Humphrey: The section will then read "The tenure of all officers, whose election is provided for in this Schedule, on the first day of October, A. D., 1889, shall be provided in the Constitution."

The Chairman: That is substantially the same.

Mr. Humphrey: I do not so understand it. I shall not take the time to tell the members in regard to overstepping the provisions of the Omnibus Bill in discussing the question with regard to the powers with regard to Section 7. In my judgment this is overstepping the power of the provision of the Constitution; this is overstepping the powers of the Omnibus Bill and it defines their terms and the Constitution provides for their terms; the laws provide for the terms of officers we now have and we have no power to change the term of office. I am not in favor of the election at that time anyway; and above all I am not in favor of infringing upon the Constitution. I am in favor of electing the officers in compliance with this Bill and in accordance with the Constitution.

The Chairman: The question before the Convention is the adoption of the remainder of the report of the Committee on Schedule and Ordinance. The gentleman from Faulk moves to amend Section 19 by striking out all after the words "shall be" in the third line of the first paragraph and inserting the following: "Shall be as provided in the Constitution." Those favoring the amendment as stated, say aye; those of the opposite opinion say no. The noes appear to have it,—

(Calls of "Rising vote".)

The Chairman: Those of the opinion that the amendment should prevail please rise and stand until counted. Those opposed rise and stand until counted. The vote stands twenty ayes, noes, thirty. The amendment to the amendment is lost. The question is upon the adoption of the motion of the gentleman from Beadle, that the rest of the report before the Convention be adopted. Is the Convention ready for the question?

Mr. Sterling: I move as a substitute that this report be postponed until next Thursday. I simply want to say that while the Chairman of that Committee said we have had that report before us for twelve hours, our attention has been called in that time to other portions of the report and there are other important matters I would like to look over and have time for the consideration of these questions.

The report provided for the election every year. It seems to me quite an important thing to be considered. I am not ready to vote upon that question.

Judge Edgerton: I would ask if the amendment is carried

and then the original motion is carried what is the condition of the report on Schedule?

The Chairman: The report would be this. We did adopt the amendment offered by the gentleman from Beadle. Defeated the motion made by the gentleman from Spink to postpone,—

Judge Edgerton: The point of order I make is, that this is not a proper amendment. It is a part of the substitute; it is not a proper amendment. One motion is to postpone and the other is to adopt.

The Chairman: Mr. Edgerton makes a point of order and the amendment is ruled out.

Mr. Hole: I offered that as a substitute.

The Chairman: The Chair cannot recognize something that is entirely different. I would have allowed it if no point of order had been raised. The motion of the gentleman from Spink is now in order. The question is upon the motion of the gentleman from Spink, to postpone further consideration of this report until next Thursday. Is the Convention ready for the question? Those favoring the motion as stated will please make it known by saying aye; those opposed by saying no. The Chair is unable to decide. (Calls of "Division".)

The Chairman: Those favoring the motion as stated will please rise and stand until counted. Those opposed will please rise and stand until counted.

The Chairman: Those who support the motion are thirty-three and those who oppose it are twenty-one.

The motion of the gentleman from Spink is carried.

Mr. Lee: I move you that the Convention do adjourn.

Which motion prevailed.

TWENTY-FOURTH DAY.

Hall of the Constitutional Convention, July 27th, 1889, Sioux Falls Dakota.

Convention called to order at 2 o'clock P. M.

Dighton Corson in the chair.

The President: The Convention will come to order and Rev. Willis will lead in prayer.

Prayer by Rev. Willis: Almighty God, we recognize Thy presence in all the affairs and interests of man's life. We believe that Thou art concerned and that thine eye is over us as individuals and communities as well as over the great national commonwealth. We believe that Thou art interested in the success and errors of man, that Thou art directing and controlling influences that are vital to our future welfare and life. That Thou art never forgetful.

Preside Thou over the deliberations of this body this day; leave the imprints of Thy hands upon the completed work of this Convention. Guide us by Thy divine wisdom, always and keep us through our Redeemer

AMEN.

The President: The Clerk will read a communication.

The Clerk reads as follows:

Sioux Falls, July 27th, '89.

JUDGE CORSON:—

Will you please preside at the Convention during my absence?

Yours truly,

A. J. EDGERTON, President.

The President: The reading of the Journal by the Clerk will be the next business in order.

Mr. Jolley: I thought while the Clerk was reading the Journal that it did not state the time that we adjourned to on motion of Mr. Van Buskirk in the morning; it should be until two o'clock.

The President: Let that correction be made.

Mr. Smith: Among the signatures to the Schedule Committee is printed R. S. Smith. It should be R. A. Smith. I would like to have it corrected.

Mr. Young: I wish to ask information in regard to those proceedings that were declared out of order. It seems to me that ought to appear on the minutes Those amendments that were declared out of order.

Mr. Jolley: The Journal should show everything. It stands as a precedent for the future.

The President: There being no further corrections the minutes will stand approved. What is the further pleasure of the Convention?

Mr. Kimball: I move that we do now adjourn.

The President: It is moved that the Convention do now adjourn. Those favoring this motion will say aye; those opposed will say no. The ayes have it; the Convention stands adjourned.

TWENTY-SIXTH DAY.

Hall of the Constitutional Convention, Sioux Falls, Dakota, July 29th, 1889.

Convention called to order at 2 o'clock P. M.

Judge Corson presiding.

The President: Rev. Mr. Huntley, of Jerauld County, will lead us in prayer.

Prayer by Rev. Huntley: O God our Heavenly Father, we bless and adore Thee as the God of nations and as the God of each individual heart and life.

We thank Thee, Our God, that Thine infinite love takes hold upon the most insignificant preacher in the universe. That Thou hast revealed to us a loving Father ready to bless Thy children with their hearts' desires when Thine infinite wisdom commends those desires. We pray Father today for wisdom and a clear discerning judgment that will enable us in Convention hall and Committee room to do good work acceptable to Thee and to our constituents. Bless with us, our fellows as they shall go about the intricate, important business of the Commission in North Dakota. Remember our dear ones at home; may they be kept of Thee we pray. Guide us through the remaining days of this Convention and at last save us Thyself, we ask in Jesus' name.

AMEN.

The President: The Clerk will read the Journal of the preceding day.

TWENTY-FOURTH DAY.

Sioux Falls, Dakota, July 27, '89.

Two o'clock P. M.

Convention called to order by Judge Corson.

Prayer by Rev. Willis.

The Clerk will read the following communication from President Edgerton:

Sioux Falls, Dakota, July 26th, 1889.

JUDGE CORSON:—

Will you please preside over the Convention during my absence.

Yours truly,

A. J. EDGERTON.

Journal read and approved.

Moved by Mr. Wheeler that we now adjourn.

Carried.

The President: There being no corrections to the minutes as read they will stand approved.

Mr. Young: Mr. President, I move you that we do now adjourn.

The President: Those favoring the motion that the Convention do now adjourn, say aye.

Mr. President: The Convention stands adjourned until to-morrow at two o'clock.

TWENTY-SEVENTH DAY.

Hall of the Constitutional Convention, Sioux Falls, Dakota, July 30th, 1889.

Convention called to order at two o'clock P. M.

Dighton Corson presiding.

The President: The Convention will please come to order.

Mr. Davies: I move that we do now adjourn.

This motion received a second and upon being put to a vote was carried and the Convention stands adjourned.

TWENTY-EIGHTH DAY.

Sioux Falls, July 31st, 1889.

Hall of the Constitutional Convention, two o'clock P. M.

Convention called to order by President Edgerton.

Prayer by Rev. Willis.

Our Father in Heaven, we recognize that Thou art an infinite God and our Father; that Thou art present in all the deliberations of this body and are cognizant of all our actions. Help us to realize that most important truth to ourselves that we may adopt the true legitimate ends of right and choose the higher motives of life.

May our lives redound to Thy glory we ask for the Redeemer's sake.

AMEN.

The President: The Clerk will read the Journal of the Twenty-sixth and Twenty-seventh days.

The Clerk reads:

TWENTY-SIXTH DAY.

Sioux Falls, Dakota, July 29th, 1889.

Two o'clock P. M.

Convention called to order by Judge Corson.

Moved by Mr. Young to adjourn.

Carried.

TWENTY-SEVENTH DAY

Sioux Falls, Dakota, July 30, '89

Two o'clock P. M.

Convention called to order by Judge Corson.

Moved by Mr. Davies to adjourn.

Carried.

The President: The Journal will stand approved unless the Chair hears objections. The Chair hears none and the Journal is approved.

A communication was read from the Commander of the G. A. R. in reference to the name of the new state,

The President: It will be referred to the Committee on Name, Boundaries and Seat of Government.

Mr. Van Buskirk: At the request of Judge Corson I present the report of the Committee on Arrangement and Phraseology as follows:

Sioux Falls, July 31, 1889.

MR. PRESIDENT:—

Your Committee on Arrangement and Phraseology to whom was referred the Preamble to the Constitution having had the same under careful consideration, beg leave to submit the following report in relation thereto, in which report there are no changes except the word "South" is inserted before the word "Dakota" in the first line and the word "South" before the word "Dakota" in the last line of said Preamble and that the changes are in conformity with the Constitution and the Omnibus Enabling Act, and herewith report the Preamble with said changes incorporated therein and respectfully recommend the adoption of the changes and the re-submission of the Preamble as amended.

Preamble.

We, the people of South Dakota, grateful to Almighty God for our civil and religious liberties, in order to form a more perfect and independent government, establish justice, insure tranquility, provide for the common defense, promote the general welfare and preserve to ourselves and to our posterity the blessings of liberty do ordain and establish this Constitution for the State of South Dakota.

D. CORSON,
Chairman of Committee.

The President: Mr. Van Buskirk moves the adoption of the report of the Committee. Those favoring the adoption of the report of the Committee as read, will please say aye; those opposed will say no. The ayes have it; the report is adopted.

The Chairman of the Committee on Arrangement and Phraseology submitted the following report.

Sioux Falls, July 31, 1889.

MR. PRESIDENT:—

Your Committee on Arrangement and Phraseology to whom was referred Article II of the Constitution, having had the same under careful consideration, beg leave to submit the following report relative thereto, and in which report there are no changes of the Constitution, and that said Article is in conformity to the pro-

visions of the Enabling Act; and respectfully recommend the adoption of the report and the resubmission of the Article.

ARTICLE II.

DIVISION OF THE POWERS OF GOVERNMENT.

The powers of government of the State are divided into three distinct departments—the Legislative, Executive and Judicial—and the powers and duties of each are prescribed by this Constitution.

D. CORSON, Chmn.

Mr. Van Buskirk: I move the adoption of the report of the Committee.

The President: Mr. Van Buskirk moves the adoption of this report of the Committee. All those favoring this motion will please make it known by saying aye. Opposed, if any, by saying no. The ayes appear to have it; the ayes have it and the report is adopted.

Mr. Willis: I move that we do now adjourn.

Mr. Parker: Before the motion is put I would like to ask consent to sign the report of the Committee on Apportionment and Schedule. I met with the Committee in all their deliberations except when I was necessarily called away last Wednesday and as the matter now stands it might appear a dereliction of duty on my part, I would like permission to sign the report.

The President: The report is not signed by the balance of the Committee.

Mr. Parker: I would like permission to sign these reports at this time.

The President: If there is no objection, leave will be granted. The chair hears no objections.

The motion to adjourn being put was carried and the Convention was declared adjourned until tomorrow 'at two o'clock.

TWENTY-NINTH DAY.

Hall of the Constitutional Convention, Sioux Falls, Dakota, August 1st, 1889.

Two o'clock P. M.

Convention called to order by President Edgerton.

Prayer by Chief Clerk, Mr. Burdick:

Our Father in Heaven, we thank Thee for thy preserving care. We thank Thee for health, life and happiness that are ours. Grant that today we may do that that shall be pleasing in Thy sight and the business that shall be transacted by this Convention today, may it meet with Divine approval. Grant that whatsoever be done, may be done with an eye to the best interests of the people. Bless us all for Christ Jesus' sake.

AMEN.

The President: The reading of the Journal will be next in order.

The Clerk, at this point, reads the Journal.

The President: Col. Jolley, has the Journal been approved?

Mr. Jolley: Yes, Sir.

Mr. Jolley: I move that the Convention do now take a recess until eight o'clock this evening. There are two reasons for making the motion. The first, the Joint Commission will be here at that time. The further reason that when we adjourned Friday night there was an agreement made between the Committee on Schedule and Mr. Sterling, to move that the rest of the report be taken up today. I move that we take a recess until eight o'clock this evening.

The President: I suggest Colonel that we dispose of the few very short matters first.

Mr. Jolley: I withdraw the motion, with the consent of my second.

Mr. Davies: I move the President appoint a Committee of

five to secure the publication of the Constitution and Schedule as ordered by the Convention.

Which motion received a second.

The President: As many as are of the opinion that the resolution be adopted, say aye. The ayes appear to have it. The ayes have it.

A communication relative to artesian wells was read by the Clerk, signed by John J. Cushing.

The President: The communication will be referred to the Committee on Judiciary.

A communication was read from John J. Cushing, of Rapid City, S. D., under date of July 27th, relative to name of the proposed new state, signed by J. M. Simmons.

The President: Referred to the Committee on Name, Boundary.

Mr. Jolley: I renew my motion to take a recess until eight o'clock this evening.

The President: The motion was made and duly seconded that the Convention do now take a recess until eight o'clock this evening. Those favoring this motion please make it known by saying aye; those opposed say no. The ayes appear to have it; the ayes have it and the Convention stands adjourned until eight o'clock this evening.

Hall of the Constitutional Convention, Sioux Falls, Dakota, August 1st, 1889.

Eight o'clock P. M.

The President: The Convention will come to order.

Mr. Edgerton: (of Yankton): Mr. President, I have a resolution I wish to offer and move its adoption.

WHEREAS: Honorable Benjamin Harrison for years has been the earnest friend of Dakota and the advocate of Home Rule in America as well as abroad, and

WHEREAS, He has contributed largely to the division of Dakota and the early admission of four great Territories into the Union of States, therefore be it

RESOLVED, By the delegates of South Dakota in Constitutional Convention assembled, that the thanks of all sincere and patriotic friends of republican government, and especially those residing in the Territories, are due to him for the consistent and unwavering stand he has maintained in favor of those principles for the admission of new States taught by the founders of the Republic.

RESOLVED, That a copy of these resolutions be transmitted by our presiding officer to the Hon. Benjaman Harrison, President of the United States.

The President: Gentlemen, you have heard the resolution offered by the gen' eman from Yankton. Is the Convention ready for action? Those favoring the resolution as read, will make it known by saying aye; those opposed by saying no. The ayes appear to have it; the ayes have it; the resolution is adopted. What is the further pleasure of the Convention.

Mr. Wescott: I move that when we adjourn tonight it be until tomorrow morning at nine o'clock.

Which motion received a second.

The President: Those favoring the motion that when the Convention adjourn, it adjourn to meet tomorrow morning at nine o'clock, say aye; those opposed say no. The ayes have it and the motion prevails.

The President: I will announce the Commmittee on Printing the Constitution in pursuance to the resolution passed this afternoon. Mr. Davies, of Edmunds; Mr. Stroupe, of Brown; Mr. Zitka, of Bon Homme; Mr. Edgerton, of Yankton; Mr. Ringsrud, of Union.

Mr. President: Unless otherwise ordered the consideration of the report of the Committee on Ordinance and Schedule. will be resumed. If I remember rightly, I may be mistaken, if I remember rightly the motion of Mr. Hole, the Chairman of the Committee was that the balance of the report be adopted.

Mr. Jolley: That motion was ruled out of order.

Mr. Hole: I think we adjourned with that motion before the House. I would ask now to withdraw the motion and that we reconsider the balance of the report section by section instead of as a whole. I would now move, that section 8 be adopted.

The President: The Clerk will read Section 8.

The Clerk reads as follows: Sec. 8. Immediately after the election herein provided for, the judges of election at each polling place, shall make a true and complete count of all the votes duly cast at such election, and shall certify and return the result of the same with the names of all candidates, and the number of votes cast for each candidate and the number of votes cast for and against the Constitution, and the number of votes cast for and against Prohibition, and the number of votes cast for and against Minority representation, and the number of votes cast for each city, town or

place, for the temporary seat of government, to the County Clerk or Auditor of their respective counties, together with one of the poll lists and election books used in said election."

The President: Gentlemen, the question is upon the adoption of Section 8 as read. Those favoring the adoption of Section 8 make it known by saying aye; opposed, if any, by saying no. The ayes appear to have it; the ayes have it and Section 8 is adopted.

Mr. Hole: I move that Section 9 be adopted.

The President: The Chairman of the Committee moves that Section 9 be adopted. The Clerk will read.

The Clerk reads Section 9 as follows: "Within five days after the said election the several boards of county canvassers provided by law for the canvassing of the results of the election shall make and certify to the Secretary of the Territory of Dakota, the true and correct return of the total number of votes cast for the Constitution, and against the Constitution, of the number of votes cast for and against Prohibition, and the number of votes cast for and against Minority Representation, and the number of votes cast for each city, town or place as the temporary seat of government, and the number of votes cast for each person voted for at such election, except county officers and members of the Legislature and shall transmit the same to the Secretary of the Territory of Dakota, by mail, and shall file with the County Clerk or Auditor of each of said counties a duplicate and certified copy of said returns.

Said Board of County Canvassers shall issue certificates of election to the persons who shall have received the highest number of votes cast for the respective officers of judge of the county court, and representatives in the Legislature and for State Senator or Senators.

The President: The question before the Convention is the adoption of Section 9 as read in your hearing. Those favoring this motion make it known by saying aye; those opposed, if any, by saying no. The ayes appear to have it; the ayes have it and the motion prevails. Section 9 is adopted.

Mr. Hole: The same motion as to Section 10.

The President: The Clerk will read.

The Clerk: "Sec. 10. When two or more counties are connected in one senatorial or representative district, it shall be the duty of the Clerks and Auditors of the respective counties to attend at the office of the County Clerk of the senior county in date of or-

ganization, within twenty days after date of election and they shall compare the votes given in the several counties comprising such Senatorial and Representative district and such Clerks and Auditors shall immediately make out a certificate of election to the person having the highest number of votes in such district for State Senator or Representative or both, which certificate shall be delivered to the person entitled thereto on his application to the Clerk of the senior county or such district.

The President: The question recurs upon the adoption of Section 10 as read. Those voting in the affirmative will say aye; those voting in the negative will say no; the ayes have it, Section 10 is adopted.

Mr. Hole: I make the same motion as to Section 11.

The President: The Clerk will read Section 11.

The Clerk: SEC. 11. The Secretary of the Territory shall receive all returns of election transmitted to him as provided, and shall preserve the same, and after they have been canvassed as hereinafter provided, and after the admission of the State of South Dakota into the Union, he shall deliver said returns to the proper State officers of said State of South Dakota.

Within fifteen days after said election, the Secretary of the Territory, with the Governor, and Chief Justice thereof or any two of them, shall canvass such returns, and certify the same to the President of the United States as provided in the Enabling Act.

They shall also ascertain the total number of votes cast at such election for the Constitution and against the Constitution; the total number of votes cast for and against prohibition, and the total number of votes cast for and against Minority Representation; and the total number of votes cast for each city, town or place as the temporary seat of government; and the total number of votes cast for each person voted for, for any office at said election, excepting County Judge and members of the Legislature, and shall declare the result of said election in conformity with such vote, and the Governor of the Territory shall thereupon issue a proclamation at once thereof.

They shall also make and transmit to the State Legislature, immediately upon its organization a list of all of the State and Judicial officers who shall thus be ascertained to be duly elected.

The various County and District Canvassing Boards shall make and transmit to the Secretary of the Territory, the names of all persons declared by them to be elected members of the Senate and House of Representatives of the State of South Dakota; he shall make separate lists of the Senators, and Representatives so elected, which lists shall constitute the rolls under which the Senate and House of Representatives shall be organized.

The Governor of the Territory shall make and issue certificates of election to the persons who are shown by the canvass to have received the highest number of votes for Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Public Instruction, Commissioner of School and Public Lands, and Judges of the Supreme and Circuit Courts. Such certificates to be attested by the Secretary of the Territory.

The President: The question is upon the adoption of Section 11. Those favoring the adoption of this section as read, make it known by the usual sign; those opposed, by saying no. The ayes appear to have it. The ayes have it, Section 11 is adopted.

Mr. Hole: I move you that Section 12 be adopted.

The Clerk: "Sec. 12. The apportionment made in this Constitution shall govern the election above provided for, for members of the State Legislature until otherwise provided by law.

At the first election held under this ordinance for Senators and Representatives of the Legislature there shall be elected forty-five Senators and one hundred and twenty-four Representatives in the State Legislature respectively."

The President: It is moved that Section 12 be adopted. Those voting in the affirmative will say aye, those voting in the negative will say no. The ayes have it. Section 12 is adopted.

Mr. Hole: I move that Section 13 be adopted.

The President: The Clerk will read.

The Clerk: "Sec. 13. The Legislature elected under the provisions of this ordinance and the Constitution shall assemble at the temporary seat of government on the 3rd Tuesday in October, in the year A. D., 1889, at 12 o'clock noon, and on the first day of their assemblage the Governor and other State officers shall take the oath of office in the presence of the Legislature. The oath of office shall be administered to the members of the Legislature, and to the State officers by the Chief Justice of the Territory, or by any other officer duly authorized by the laws of the Territory of Dakota to administer oaths."

The President: The Convention is now about to vote upon the adoption or rejection of Section 13. Those favoring the motion say aye; those favoring or voting in the negative say no. The ayes appear to have it; the ayes have it. Section 13 is adopted.

Mr. Hole: The same motion as to Section 14.

The Clerk: "Sec. 14. Immediately after the organization of the Legislature and taking the oath of office by the State officers,

the Legislature shall then and there proceed to the election of two Senators of the United States for the State of South Dakota, in the mode and manner provided by the laws of Congress for the election of the United States Senators. And the Governor and Secretary of State of South Dakota shall certify the election of the said Senators, and two Representatives in Congress in the manner required by law."

The President: The question recurs upon the adoption of Section 14 of the report of the Committee on Schedule and Ordinance. Those favoring this motion will make it known in the usual manner. Those opposed, in the same way. The ayes appear to have it; the ayes have it. Section 14 is duly adopted.

Mr. Hole: I move that Sections 15 and 16 be adopted.

The Clerk: SECTION 15. Immediately after the election of the United States Senators as above provided for, said Legislature shall adjourn to meet at the temporary seat of government on the first Tuesday after the first Monday of January, 1890, at 12 o'clock M.

Provided, however, that if the State of South Dakota has not been admitted by proclamation or otherwise at said date, then said Legislature shall convene within ten days after the date of admission of the State into the Union.

SEC. 16. Nothing in this Constitution or Schedule contained shall be construed to authorize the Legislature to exercise any powers except such as are necessary to its first organization, and to elect United States Senators, and to adjourn as above provided.

Nor to authorize an officer of the Executive, Administrative or Judiciary Departments, to exercise any duties of his office until the State of South Dakota shall have been regularly admitted into the Union excepting such as may be authorized by the Congress of the United States.

The President: Gentlemen, the motion before you now of the gentleman from Beadle, is upon the adoption of Sections 15 and 16 of the report under consideration. Are you ready for the question? Those supporting the motion will make it known by saying no. The motion prevails. Sections 15 and 16 are adopted.

Judge Corson: I desire the gentleman to withdraw 17. I may be mistaken.

Mr. Hole: I move that Section 17 be adopted.

The Clerk Sec. 17. "The ordinances and Schedule enacted by this Convention shall be held to be valid for all the purposes thereof."

The President Those favoring the adoption of Section 17 will vote aye; those opposed will say no. The ayes appear to have it; the ayes have it. Section 17 is adopted.

Judge Corson: I move to add after the 4th subdivision of Section 18 a subdivision numbered "5" which is as follows: "Fifth. That jurisdiction is ceded to the United States over the military reservations of Ft. Meade, Ft. Randall, and Fort Sully, heretofore declared by the President of the United States; provided legal process, civil and criminal, of this State shall extend over such reservations in all cases of which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations." I will in this connection ask the Clerk to read a letter of the Commanding General of this Department.

The Clerk reads:

Headquarters Dept. of Dak, St. Paul, Minn., July 25th 1889.
TO THE PRESIDING OFFICER OF THE CONSTITUTIONAL CONVENTION
OF SOUTH DAKOTA:

SIR:—

I have the honor, in accordance with instructions received from the War Department to request that consideration of the Convention be invited to the proposition that a clause be inserted in the Constitution of the State of South Dakota, by which jurisdiction shall be reserved to the United States, as provided in Section Eight of Article One of the Constitution, over the military reservations of Forts Meade, Randall and Sully, heretofore declared by the President.

Very respectfully your obedient servant,

THOS. H. RUGER,
Brigadier-General Commanding.

Mr. Corson: I will state that this letter came to us through the hands of Lieutenant Fowler, one of the staff. It seems that the object is to prevent conflict of jurisdiction between the State authorities and the United States authorities over these reservations; a matter that has given the United States some trouble in certain localities; and they desire to avoid it here. I suppose there will be no objection to conceding this jurisdiction, as it is generally done in all cases where it is requested. This is an oversight. It is usual in enabling acts to provide for this, but through some oversight it was neglected in ours. Hence, the Department has deemed it of sufficient importance to engrave it in our Constitution. I will therefore move that the amendment be adopted.

Which motion received a second.

Mr. Jolley: I will call attention, gentlemen, to this fact, this Section 18—and the reason why it was put in this Schedule is this: That the Enabling Act said, that we should by ordinance make such a provision as this and in order to comply with the Enabling Act this was put in the Schedule by the Committee. There is also, I will inform the gentleman further always just such a provision in a Constitution under the head of Compact with the United States; I think that it would have very little force in this Schedule. The amendment offered by the gentleman from Lawrence may be regular, but I think the better course would be to make the compact with the United States in the Constitution and add it there, and in so doing add it in both places.

Mr. Corson: I hardly think that would be necessary, one compact has been adopted and enrolled and it would make considerable changes now to incorporate it in that provision. I believe it might be satisfactory to place it as contemplated in this amendment. I do not think there can be any objection.

Mr. Hole: I would like to hear the amendment read again.

The Clerk reads the amendment as desired.

The President: Those of the opinion that the amendment should be adopted say aye; those opposed say no. The ayes have it. The question now recurs on the adoption of Section 18 as amended. The Clerk will read Section 18 with the amendment.

The Clerk: SEC. 18. That we, the people of the State of South Dakota, do ordain:

First: That perfect toleration of religious sentiment shall be secured, and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

Second: That we, the people inhabiting the State of South Dakota do agree and declare, that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries of South Dakota; and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.

That the lands belonging to the citizens of the United States residing without the said State shall never be taxed at a higher rate than the lands belonging to residents of this State. That no taxes shall be imposed by the State of South Dakota on lands or property therein belonging to or which may hereafter be purchased by the

United States, or reserved for its use. But nothing herein shall preclude the State of South Dakota from taxing as other lands are taxed any lands, owned or held by any Indian who has severed his tribal relation and has obtained from the United States, or from any person a title thereto by patent or other grant save and except such lands as have been, or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation, all such lands which may have been exempted by any grant or law of the United States shall remain exempt to the extent, and as prescribed by such Act of Congress.

Third: That the State of South Dakota shall assume and pay that portion of the debts and liabilities of the Territory of Dakota as provided for in this Constitution.

Fourth: That provision shall be made for the establishment and maintenance of systems of public schools which shall be open to all the children of the State and free from sectarian control.

Fifth: That jurisdiction is ceded to the United States over the military reservations of Fort Meade, Fort Randall and Fort Sully heretofore declared by the President of the United States; provided legal process, civil and criminal, of this State shall extend over such reservations in all cases of which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

These ordinances shall be irrevocable without the consent of the United States and also the people of said State of South Dakota, expressed by their Legislative assembly.

The President: Is the Convention now ready? Those favoring the adoption of the motion of the gentleman from Lawrence will say aye; and those opposed will say no.. The ayes have it. Section 18 as amended, is adopted.

Mr. Hole: I move that Section 19 be adopted.

The Clerk: SEC. 10. The tenure of all offices, whose election is provided for in this Schedule on the first day of October, A. D., 1889, shall be as follows.

The Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Public Instruction, Commissioner of School and Public Lands, Judges of County Courts, shall hold their respective offices until the first Tuesday after the first Monday in January, A. D., 1892, at twelve o'clock M. and until their successors are elected and qualified.

The Judges of the Supreme Courts and Circuit Courts shall hold their offices until the first Tuesday after the first Monday in January, A. D., 1894, at 12 o'clock M. and until their successors are elected and qualified, subject to the provisions of Section 26 of Article V of the Constitution.

The terms of office of the members of the Legislature elected

at the first election held under the provisions of this Constitution, shall expire on the first Tuesday after the first Monday in January, one thousand eight hundred and ninety-two. (1892).

Mr. Williams: I have an amendment to that Section just read; I will state my reasons for moving it.

The Clerk reads the amendment. "Amend Section 19 of the report of the Committee on Schedule and Ordinance, by striking out the dates, 1892 and 1894 where they occur in said section, and inserting in lieu thereof the date 1891."

Mr. Williams: I will move the adoption of the amendment of Section 19 as read which motion received a second.

The President: Mr. Williams moves to amend Section 19, as read. Is the Convention ready for the question?

Mr. Hole: I would like to hear the amendment read again please.

The Clerk again reads the amendment.

Mr. Williams: My object in moving that amendment will occur to you upon half a moment's consideration. In the second clause of the Section as it now stands, Sec. 19, it provides that the Governor, Lieutenant Governor, Secretary of State, Auditor, Treasures, Attorney General, Superintendent of Public Instruction, Commissioner of School and Public Lands, Judges of County Courts, shall hold their respective offices until the first Tuesday after the first Monday in January, 1892. The fourth clause of the section provided the terms of office of the members of the Legislature elected at the first election held under the provisions of this Constitution shall expire on the first Tuesday after the first Monday in January, 1892. That section as it stands and Section 3 provides that the Judges of the Supreme and Circuit Courts shall hold their office until the first Tuesday after the first Monday in January, 1894, in fact, extends the time and provides that the tenure of office of the officers elected in this October election extends beyond the time of the term fixed by the Constitution. It goes beyond the necessity which this State is under after getting into the Union to tide over until an election can be held under the Constitution. I take it the only necessity by the provision of the Schedule and Ordinance is to extend over the time until the people vote after we become a State, until the State government can elect their State officers and no longer.

Further, the Constitution provides that the term of the Legislature of the members of the Legislature, shall be two years; it

further provides that the Legislature shall meet on the January following the election of each Legislature. This provides that the Legislature elected in October shall hold until January, 1892, and the first meeting of this Legislature will be in January, 1890. By the Constitution the Legislature must again assemble in January, 1892. And also by the terms of the Constitution the Legislature elect must assemble in January immediately following its election. Now, then, if the terms of the Legislators elected at this coming October election extends to 1892 the only way that the Constitutional provision can be complied with is by a general election in 1891; the Constitution provides that the Legislature shall assemble in January following its election. Thus offering an amendment to the Constitution—the Constitution provides for one election and only one, and that is a general election. We have upon our statute books of the Territory the law that the general elections occur on the even numbered years; it is undoubtedly intended the first general election after the admission of the State will occur in 1890; then at that time the Legislature must be elected again and will assemble in January, 1891 otherwise if this report is adopted there will have to be a general election provided for by the Legislature for 1891, and they must assemble in January following their election. The Legislature must convene every two years. That will consequently coerce the Legislature into providing an election for each year. This I take it is not in accordance with the wishes of the people; I take it, it is not in accordance with the Constitution.

The Constitution also provides that the length of term of office of the Supreme Court Judges that are elected at the first election under the Constitution shall be four years, and after that it is six years; and that the Legislature may provide by law for the election of the judges of the courts at a different time than at which other officers are elected; and in order that they may do this the Constitution gives the Legislature the power to extend or abridge the term of office of any officer then holding; but it nowhere indicates that this Convention even if it was in the provision of the Constitution to enact that, that this Convention by ordinance may prescribe for the term of office of either the State or County officers. The Judges of the Courts have a longer time than the Constitution prescribes. A constitution having fixed a time at which the Legislators must assemble,—the January following their election and only provided for the general election the necessary result is that

the Legislature must provide for a general election in 1891. And the result would be that we will hold a general election each year. This amendment that I have offered will work this way; it provides that the officers elect, that his office will hold over until January 1891, leaving it until the general election in 1890 to elect a full set of officers of County officers and State officers and Judges of the Courts. It will also leave it for the Legislature hereafter if the people demand it to provide for a general election every year, in which the Judges may be elected at different times than the other officers. I think it will meet with the hearty concurrence of the people at large of the Territory or the proposed State to provide only for the one election and if the officers were to hold until January, 1891.

Mr. Hole: Probably the foundation question in this is whether the officers elected this fall are elected under the Constitution. Some argue that the Constitution not being adopted that they cannot be elected. In answer to that we say if they are elected, and the Constitution falls, they fall with it. This is the proposition submitted to the people; the Constitution, if it stands, the officers are elected under its provisions and hold under its provisions of the Constitution. The Constitution provides in Section 1 of Article 4 that the Governor shall hold his office for two years, if we elect a Governor this fall under the provisions of this Constitution and I would say that the Schedule and Ordinance as passed provides that we do hold this election under the provisions of this Constitution, then we elect Governor and Lieutenant Governor under its provisions, it will quite naturally follow all officers elected shall serve their time out as provided by the Constitution. And to escape any possible trouble in this direction, it seemed safe and proper to your Schedule Committee to follow the provisions of the Constitution, knowing that we were in a different position from Constitutional Conventions, as a rule. We have only partial authority. This has been adopted and voted on by the people; we merely make the changes.

Again in Section 3. "The Governor and Lieutenant Governor shall be elected by the qualified electors of the State at the time and place of choosing the members of the Legislature." We choose the members of the Legislature in October; under the provisions of Section 3 we must elect the Governor and Lieutenant Governor at the same time and place. We can trace this through as to all the officers under the Constitution. In Section 8, Article 5. "The

term of the Judges of the Supreme Court, who shall be elected at the first election under this Constitution shall be four years." At the first election under this Constitution,—now if there is no election under the Constitution the Supreme Court Judges would naturally hold until there could be an election under the Constitution which might be in a few years or a year or two months. It has not seemed to the Committee advisable that the Judges of the Supreme Court of South Dakota elected for the first term should be elected for a short time. I think that that will be the conclusion, gentlemen, of every delegate here. That it is not desirable; that the Judges of the Supreme Court of our new State should be elected for so short a time.

In Section 15 of this same article we find "The State shall be divided into Judicial Circuits in each of which there shall be elected by the electors thereof one Judge of the Circuit Court therein whose term of office shall be four years." If you commence to cut down the time of these offices, this same difficulty runs through everything.

If you follow the provisions of this Constitution, it makes the terms of desirable length. The one thing that is not desirable is having an election every year instead of every two years; I cannot say that this will be desirable. You elect all the officers of the State and County and Circuit at one time, and there is so much opportunity for figuring the decision of many of our State is that they have found it undesirable. I think that those states who have divided the elections up have found it most desirable for good government.

Section 19 in regard to County Courts: "There shall be elected in each organized County a County Judge who shall be Judge of the County Court of said county, whose term of office shall be two years until otherwise provided by law." Our Schedule conforms to this. In Section 26, "The Judges of the Supreme Court, Circuit Courts, and County Courts shall be chosen at the first election held under the provisions of this Constitution, and thereafter as provided by law, and the Legislature may provide for the election of such officers on a different day from that on which an election is held for any other purpose and may, for the purpose of making such provision extend or abridge the term of office for any of such Judges then holding, but not in any case more than six months."

In Section 37 it provides for the appointment of officers which was discussed the other evening.

I think that these Sections,—Section 5 again of Article 9 provides: "In each organized county at the first election held after the admission of the State of Dakota into the Union", you will notice the different provision here, the next election provided for in Section 5 of Article 8 reads: "In each organized County."

Mr. Williams: May I ask a question? Does not that read, "The first general election"?

Mr. Hole: It does not so read in my book.

Mr. Humphrey; In the report of the Committee to compare and proof-read the Constitution the word "general" is found to be there.

Mr. Hole: This election is provided for after the admission of the State; the other elections referred to are provided for in the Constitution. I say, the intent of the makers of the Constitution was to make the officers superior to the adoption of the Constitution, while the provision for the State government to take the place of the Territorial government was after the adoption leaving the Territorial officers to hold until after the beginning. Section 5 provides for the County officers and those not provided for under the provisions of the election provided for under the Constitution. I think when you have considered this and read over these sections with the same care that your committee have, that you will arrive at this conclusion, that the only safe way is in taking the course to follow the chart. We have the Constitution as voted upon. That has been our conviction and while it may be desirable to many that the election should be every two years, as a personal matter, I think it is best the way it is. I think this is the intent of the framers of the Constitution and I think it is better.

Mr. Wood, of Pennington: I think the amendment should be divided into Sections to which the amendment refers, because it covers two dates, the date 1892 and 1894. I move you that the question raised by the amendment be divided.

Mr. Williams: I will accept that without putting it as a motion.

Mr. Sherwood, of Clark: I think the Chairman of the Committee has perhaps directed our attention to the chief question at issue,—whether we are holding this election under the provisions of the Constitution or under the Omnibus Bill. I think we are

holding the election under the provisions of the Omnibus Bill. At the present time the Constitution is without force. We stand in a somewhat different position from that of the Convention of 1885 in this matter from the fact that they had no Enabling Act to go by and perhaps the authority they had must have been that of the Legislature calling the Constitutional Convention. It appears to me, however, if the gentleman is correct in his theory that this election is being held under the Constitution that we may strike another trouble, and that is the qualifications of electors; if this is being held under the provisions of the Constitution and not under the Enabling Act, of course, then the provisions of the Constitution will prevail as to the qualifications of the voter; his rights, powers and duties will be governed by the Constitution in that election; the right of suffrage I apprehend no one will contend that for a moment because of Omnibus Bill especially provides what the qualifications of the voter shall be. Section 3 says, "That all persons who are qualified by the laws of said Territories to vote for Representatives to the Legislative Assembly thereof are hereby authorized to vote for and choose delegates to form Conventions in said proposed States; and the qualifications of delegates to such Conventions shall be such as by the laws of such Territories respectively persons are required to possess to be eligible to the Legislative Assemblies thereof; and the aforesaid delegates to form said Conventions shall be apportioned within the limits of the proposed States in such districts as may be established as herein provided, in proportion to the population in each of said Counties and Districts as near as may be, to be ascertained to the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information attainable, in each of which districts these delegates shall be elected, but no elector shall vote for more than two persons for delegates to such Conventions; that said apportionments shall be made by the Governor, the Chief Justice, and the Secretary of said Territories; and the Governors of said Territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed States, to be held on a Tuesday after the second Monday in May, 1889, which proclamation, shall be issued on the 15th day of April, 1889; and such election shall be conducted, the return made, the result ascertained, and the certificates to persons elected to such Convention issued in the same manner as is prescribed by the laws of said Territories, regu-

lating elections therein for delegates to Congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said Conventions, respectively, shall be seventy-five, and all persons residents in said proposed States who are qualified voters of said Territories as herein provided, shall be entitled to vote upon the election of delegates and under such rule and regulations as said Conventions may prescribe, not in conflict with this act upon the ratification or rejection of the Constitution. In this case, the Omnibus Bill claims to provide for this election, and any person shall be entitled to vote who is entitled to vote for members of the Legislature under the laws of the Territory. Believing that if this election is under the Constitution that there could possibly be a conflict between the Omnibus Bill and the Constitution I do not think there is a good reason for the amendment. I am therefore opposed to this amendment.

Mr. Hartley: As a member of that Committee I would like to say a word. This matter, by direction of the Committee, was submitted to a sub-committee of which I was a member. I drew the original draft of this Schedule. I had embodied in it, substantially, Mr. Williams' amendment. By vote of the Committee it was changed as reported. While I assented to the change, still I am of the same opinion that we have the power to regulate this matter and that we should so provide that these officers should be elected at the first general election and that in ascertaining what that general election means as used in the Constitution we should use the legal Territorial definition which I understand under the statute is to the effect that the general elections are held on the even numbered years. In my mind the framers of this report had that definition in view when they used this; and in order to bring the election of these officers upon the first general election which if I would understand it would be in the year 1890. I am in favor of the amendment as proposed by Mr. Williams as relating to the second subdivision of Section 19, Schedule and Ordinance report.

"The Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Public Instruction, Commissioner of School and Public Lands, Judges of County Courts, shall hold their respective offices until the first Tuesday after the first Monday in January, A. D., 1892, at twelve o'clock, M., and until their successors are elected and qualified.

Mr. Price: I am not prepared to discuss this question tonight;

I am not, this evening, even prepared to intelligently vote upon it. It occurs to me, however, that the proposed amendment to the original article is worthy of careful study and thoughtful consideration of the members of this Convention and from the diversity of opinion expressed in these debates I would say, this Convention is not ready to vote upon it at this time. I have no doubt we all are anxious to go home, but this is a matter of such vast importance it should not be acted upon hastily. I therefore move you that further consideration of this report be postponed until tomorrow morning.

This motion received a second.

Mr. Davies: In view of the fact that we are drawing pretty near to the close of this Convention and this matter has been brought before the Convention several days ago and has been postponed until this night, it is not probable that more careful consideration will be given it if we should postpone it. I move to lay this motion upon the table.

Mr. Lee: I second the motion.

The President: The question before the Convention is upon the adoption of Section 19; to this the gentleman from Bon Homme moves an amendment. The gentleman from Hyde moves to postpone further action until tomorrow morning; the gentleman from Edmunds moves to lay the motion upon the table. Those favoring the motion to lay this amendment upon the table say aye; those opposed say no. The Chair is unable to decide.

Calls of "Rising vote".

The President: Those favoring the motion as stated, please make it known by rising; those opposed by rising, and standing until they are counted.

The President: There are twenty-five ayes and thirty-five noes. The motion is lost.

The President: The question recurs upon the motion of the gentleman from Hyde that further consideration of Section 19 be postponed until tomorrow morning at nine o'clock.

Mr. Van Buskirk: I have desired that if the gentleman from Hyde would give way, to offer the motion to the effect that this Section 19 of the amendment be referred back to the Committee for further consideration to report, perhaps at two o'clock tomorrow.

A Voice: No, we do not want it referred back to the Committee for further consideration.

Voces from different parts of the hall "No. no."

Mr. Van Buskirk: I was going to add that if they have the power and we think they have, that they so amend that Section 19 as so that we may avoid that one election that all the officers, both county and State may be elected the same time and that it would behoove the Committee to consider it a little further; perhaps there has been some little additional light found by the Committee upon this since it was reported.

Mr. Hole: The motion before the House now is to postpone this until tomorrow morning and for one I would like to hear from every gentleman upon this very question. I don't think there is any conflict to it and we would like to hear from every member of this Convention upon this very important question.

Mr. Price: I want the gentlemen of this Convention to have an opportunity to study this provision in this Schedule Report. I have been absent to North Dakota; I want this courtesy shown so that I can have an opportunity to study it so that I can vote intelligently.

Mr. Wescott: It seems that we have had this letter before us four or five days. I am ready to vote tonight as well as tomorrow morning.

Mr. Williams: I am ready to vote upon this proposition now, some of these gentlemen have been away considering other matters. I would like that they have time to consider it if they desire it.

The President: I think that Rule 6 determines this question that is, the motion made by the gentleman from Hyde to postpone consideration of this question until tomorrow takes precedence of the motion to commit. The question then before the Convention is, that further consideration of this matter be postponed until tomorrow morning at nine o'clock. Those favoring the motion please make it known by saying aye; and those opposed by saying no. The ayes appear to have it; the ayes have it; the further consideration of the motion to adopt Section 19 and the amendments thereto is postponed until tomorrow morning at nine o'clock.

Mr. Hole: I move you that Section 20 be adopted.

Which motion received a second.

Mr. Hartley: I would move that Section 20 be deferred until tomorrow morning. Its form depends upon the decision of the Convention in regard to 19.

Mr. Hole: I will withdraw the motion. I think that that is proper.

Mr. Hole: I move the adoption of Sections 21 and 22.

Which motion received a second.

The Clerk: SEC. 21. The following form of ballot is adopted:

Constitutional Ticket.

INSTRUCTIONS TO VOTERS.

All persons desiring to vote for the Constitution or for any of the articles submitted to a separate vote, may erase the word "No".

All persons who desire to vote against the Constitution or any articles separately submitted, may erase the word "Yes".

For the Constitution. Yes. No.

For Prohibition. Yes. No.

For Minority Representation. Yes. No.

For as temporary seat of government.

For Governor.

For Lieutenant Governor

For Secretary of State.

For Auditor.

For Treasurer.

For Attorney General.

For Superintendent of Public Instruction.

For Commissioner of School and Public Lands.

For Judges of the Supreme Court.

First District

Second District.....

Third District.....

For Judge of the Circuit Court.....Circuit.

For Representatives in Congress.

For State Senator.

For Representatives in the Legislature.

For County Judge.

SEC. 22. This Constitution shall be engrossed, and after adoption and signing by the Convention shall be delivered to Hon. A. J. Edgerton, the President of the Constitutional Convention for safe keeping, and by him to be delivered to the Secretary of State as soon as he assumes the duties of his office, and printed copies thereof shall be prefixed to the books containing the laws of the State and all future editions thereof.

The President of this Convention shall also supervise the making of the copy that must be sent to the President of the United States; said copy is to be certified by the President and Chief Clerk of this Convention.

The President: The question before the Convention is the adoption of Sections 21 and 22 of the Schedule report. Those favoring this motion as stated make it known by saying aye; those opposed, if any, by saying no. The ayes appear to have it; the ayes have it and Sections 21 and 22 are adopted.

Mr. Kellam: As from the report that is now being considered as printed, this seems to be the last section of the report, I desire to say before the report is closed and acted upon by the Convention that the Joint Commission at Bismarck, by resolution, agreed to recommend certain provisions to be inserted in the Schedule of the respective Constitutions of North Dakota and South Dakota. I only speak of it now so that these matters may be considered in connection with the Schedule.

Mr. Hole: I would think if there is other matters to be con-

sidered in connection with the Schedule, if those other matters are ready, it would be well to report them now so that they can be considered.

Major Kellam: The recommendation of the Joint Commission is dependent upon and follows the agreement that has been made by the Joint Commission and applies exclusively to the arrangement that was made by that Joint Commission in reference to the distribution of the records of the Territory of Dakota and if I might do so, as the hour is getting well advanced, and for reasons that you will all understand when I suggest that copies of this agreement may possibly appear in the morning papers of both Sioux City and his city. There would be an impropriety in that agreement appearing in the newspapers before its formal presentation to this Convention. I would like to present the agreement to this Convention, so as to save any violation of propriety that might occur from publication of this prior to its being formally presented to this Convention. And if it should be satisfactory to the Convention, having already disposed of this report of this Committee on Schedule so far as printed. To receive this report now, it would put the matter then in shape so that it might properly be published tomorrow.

Mr. Williams: I would move that the report be received.

The President: It does not need any motion. The gentleman from Brule is in order.

The report of the Joint Commission was received by the Convention as follows

WHEREAS, By an Act of Congress, approved February 22, 1889, entitled "An Act to Provide for the Division of Dakota into two States, and to Enable the People of North Dakota, South Dakota, Montana and Washington to form Constitutions and State governments and to be admitted into the Union on an equal footing with the original States and to Make Donation of Public Lands to Such States." It was among other things provided that when the Constitutional Convention of North Dakota and the Constitutional Convention of South Dakota, which by said Act were duly provided for and authorized, should assemble and organize as in said Act provided, it should be and become the duty of said Conventions respectively to appoint a Joint Commission to be composed of not less than three members of each Convention, whose duty it should be to assemble at Bismarck, the present seat of government of said Territory and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records and also, adjust and agree upon the amount of the debts

and liabilities of the Territory, which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota, and

WHEREAS, The said Constitutional Conventions of North Dakota and South Dakota having been duly elected and assembled and organized in pursuance of and as provided in said Act did, as therein required and provided and for the purposes therein specified, appoint a Joint Commission, consisting of not less than three members of each Convention, towit: Seven members of each Convention as follows, to-wit:

E. W. Camp, B. F. Spalding, Alex Griggs, Andrew Sandager, W. E. Purcell, Harvey Harris and J. W. Scott., appointed by the Convention of North Dakota, and A. G. Kellam, V. T. McGilly-cuddy, Henry Neill, E. W. Caldwell, William Elliott, Charles H. Price, and S. F. Brott, appointed by the Convention of South Dakota, and

WHEREAS, The said Joint Commission so appointed and composed, having duly assembled at Bismarck, as by said Act provided, and being now and here so assembled, and having as such Joint Commission duly and carefully considered the several matters which by said Act are referred to them for disposition and agreement, do now adopt and confirm the following agreement, compact and convention, that is to say:

I.

This agreement shall take effect and be in force from and after the admission into the Union as one of the United States of America, of either the State of North Dakota or the State of South Dakota.

II.

The words "State of North Dakota" wherever used in this Agreement shall be taken to mean Territory of North Dakota in case the State of South Dakota shall be admitted into the Union prior to the admission into the Union of the State of North Dakota; and the words "State of South Dakota", wherever used in this Agreement shall be taken to mean the Territory of South Dakota in case the State of North Dakota shall be admitted into the Union prior to the admission into the Union of the State of South Dakota.

III.

Upon the taking effect of this Agreement all the right, title, claim and interest of the Territory of Dakota in and to any public institutions, grounds or buildings situated within the limits of the proposed State of North Dakota, as such limits are defined in said Act of Congress, shall vest in said State of North Dakota, and said State of North Dakota shall assume and pay all bonds issued by for the purchase, construction, repairs or maintenance of such

public institutions, grounds or buildings and shall pay all warrants issued under and by virtue of that certain Act of the Legislature Assembly of the Territory of Dakota, approved March 8th, 1889, entitled, "An Act to Provide for the Refunding of Outstanding Warrants Drawn on the Capitol Building Fund."

IV.

Upon the taking effect of this Agreement, all right, title, claim and interest of the Territory of Dakota in and to any public institutions, grounds or buildings situated within the limits of the proposed State of South Dakota, as defined in said Act of Congress, shall vest in said State of South Dakota. And said State of South Dakota shall assume and pay all bonds issued by the Territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings.

V.

That is to say:

The State of North Dakota shall assume and pay the following bonds and indebtedness, to-wit:

Bonds issued on account of the Hospital for Insane at Jamestown, North Dakota, the face aggregate of which is	\$266,000 00
Bonds issued on account of the North Dakota University at Grand Forks, North Dakota, the face aggregate of which is	96,700 00
Bonds issued on account of the Penitentiary at Bismarck, the face aggregate of which is	93,600 00
Refunding Capitol Building Warrants, dated April 1, 1889	83,507 46

And the State of South Dakota shall assume and pay the following bonds and indebtedness, to-wit:

Bonds issued on account of the Hospital for the Insane at Yankton, South Dakota, the face aggregate of which is	210,000 00
Bonds issued on account of the School for Deaf Mutes at Sioux Falls, South Dakota, the face aggregate of which is	51,000 00
Bonds issued on account of the University at Vermillion, South Dakota, the face aggregate of which is	75,000 00
Bonds issued on account of the Penitentiary at Sioux Falls, South Dakota, the face aggregate of which is	94,300 00
Bonds issued on account of the Agricultural College at Brookings, South Dakota, the face aggregate of which is	97,000 00
Bonds issued on account of the Normal School at Madison, South Dakota, the face aggregate of which is	49,400 00

Bonds issued on account of the School of Mines at Rapid City, South Dakota, the face aggregate of which is	33,000 00
Bonds issued on account of the Reform School at Plankinton, South Dakota, the face aggregate of which is	30,000 00
Bonds issued on account of the Normal School at Spearfish, South Dakota, the face aggregate of which is	25,000 00
Bonds issued on account of the Soldiers' Home at Hot Springs, South Dakota the face aggregate of which	45,000 00

VI.

Each State shall receive all unexpended balances of the proceeds of the bonds which it so assumes, whether such balances have been covered back into the treasury or not.

VII.

All furniture, fixtures, provisions, appurtenances and appliances, tools, implements, and other movable property of the Territory of Dakota, situate in or used in connection with any of the said public institutions, grounds or buildings, shall become and be the property of the State or Territory in which such grounds, buildings or institutions may be situated, except as herein specifically provided.

VIII.

In case of loss in whole or part of any of the property of the Territory of Dakota prior to the taking effect of this agreement, the State in which such property would have vested if the same had not been destroyed, or in which such property so injured shall vest, shall receive any sums payable upon policies of insurance issued upon such property; and if loss not covered by insurance occurs on any of such property, such loss shall be borne by the State in which it is hereby agreed that such property would vest on the taking effect of this agreement.

IX.

Upon the taking effect of this agreement all unearned premiums of insurance shall vest in the State or Territory in which the property insured thereby shall vest.

X.

The States of North Dakota and South Dakota shall pay one-half of all liability now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or here-

after incurred on account of public institutions, grounds or public buildings, except as otherwise herein specifically provided.

XI.

Each of said States shall succeed to all rights of the Territory of Dakota upon contracts for public works within such State or upon bonds given to secure the performance of such contracts.

XII.

All other bonds issued prior to the taking effect of this Agreement upon which is a cause of action has or shall prior to the taking effect of this agreement accrue to the Territory of Dakota shall be sued upon by the State of North Dakota, and it is hereby made the duty of said State to sue thereon, and one-half of the penalties or damage collected by said State thereon shall be paid over to the other State, and the costs of such suit or collection shall be borne equally by said States, save as it may be necessary to apply such proceeds otherwise in order to carry into effect the provisions of Article XXI of this agreement.

XXII.

The furniture, fixtures, appliances and appurtenances used in and about or pertaining to the public offices of the Territory shall be the property of the State within the proposed limits of which said offices are now kept.

XIV

The Territorial Library, including such books and volumes as may be added thereto prior to the taking effect of this agreement, shall be the property of the State of South Dakota.

XV.

One-half of all the copies of the Complied Laws of the Territory of Dakota, Revised Codes and of all Session Laws, printed Journals of the House and Council of the Legislative Assembly of said Territory, and of other printed reports of offices of the Territory (except those composing a part of said library), remaining undisturbed or undisposed of according to law at the taking effect of this agreement, shall be delivered on demand to the proper authorities of the State of South Dakota.

XVI.

All arms, ammunition, quartermaster's and ordnance stores distributed to and now in possession of militia companies of the Territory of Dakota shall remain in their possession, and all the right, title and interest of the Territory of Dakota in and to such arms, ammunition and stores shall vest in the State in which the

armories or headquarters of such companies shall be situated. All 45-caliber rifles and ammunition of same caliber stored in Capitol at Bismarck and 45-caliber rifles heresofore issued to Company F, First Regiment, at Bismarck, shall be the property of North Dakota.

XVII.

All other arms, ammunition, quartermaster's and ordnance stores shall be equally divided between the States of South Dakota and North Dakota.

XVIII.

All other items of personal property and miscellaneous effects belonging to the Territory except the Territorial Library and the Territorial records and archives, shall be divided as nearly equally as possible between North and South Dakota.

XIX.

The State of South Dakota shall pay the State of North Dakota forty-six thousand five hundred dollars, on account of the excess of Territorial appropriations for the permanent improvement of Territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the Territorial Library, and in full settlement of unbalanced accounts, and of all claims against the Territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific railroad lands and the payment of said amount shall discharge and exempt the State of South Dakota from all liability for or on account of the several matters hereinbefore referred to, nor shall either State be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the Territory of Dakota had such Territory remained in existence, and which liability shall grow out of matters connected with any public institutions, grounds or buildings of the Territory situated or located within the boundaries of the other State.

XX.

Neither State shall pay any portion of the liability of the Territory arising out of the erroneous taxation of property situated in the other State.

XXI.

A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds, or buildings located within its boundaries on account of the current appropriations since

March 8th, 1889: and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each State will be charged with one-half of all other expenses of the Territorial government during the same time. All moneys paid into the Treasury during the period from March 8th, 1889, to the time of the taking effect of this agreement by any county, municipality or person within the limits of the proposed State of North Dakota shall be credited to North Dakota; and all such sums paid into said Treasury within the said time by any county, municipality or person within the limits of the proposed State of South Dakota shall be credited to the State of South Dakota; except that any and all taxes on gross earnings paid into said Treasury by railroad corporations since the 8th day of March based upon the earnings of the years prior to 1888, under and by virtue of the Act of the Legislative Assembly of the Territory of Dakota approved March 7th, 1889, and entitled "An Act Providing for the Levy and Collection of Taxes upon Property of Railroad Companies in this Territory", being Chapter 107 of the Session Laws of 1889 (that is, the part of such sums going to the Territory), shall be equally divided between the States of North Dakota and South Dakota. And all taxes heretofore or hereafter paid into the said Treasury under and by virtue of the Act last mentioned, based on gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the Territorial treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed State of North Dakota, and South Dakota so much thereof, as shall be or has been paid by railroads within the limits of the proposed State of South Dakota. Each State shall be credited, also with all balances of appropriations made by the Seventeenth Legislative Assembly of the Territory of Dakota, for the account of the public institutions, grounds or buildings located within its limits remaining unexpended on March 8th, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each State shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such State in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said State as provided in this Article; and if there should be a surplus at the time of such final adjustment each State shall be entitled to the amount received from counties, municipalities, railroad corporations or persons within its limits, over and above the amount charged to it.

XXII.

The payment from South Dakota to North Dakota shall be

made by South Dakota's assuming North Dakota's share or current liabilities at the time of the final adjustment, to the extent of South Dakota's indebtedness under this agreement, to North Dakota; and if any balance shall remain due to North Dakota from South Dakota, payment of said balance shall be provided for by the first Legislature of South Dakota.

XXIII.

Upon the taking effect of this agreement all claims for taxes due the Territory of Dakota shall become the property of and may be collected by the State or Territory within the limits whereof the counties are situated against which such taxes stand charged upon the Territorial Treasurer's books.

But this Article shall not be held to refer to or govern the disposal of any taxes to be paid by railroad corporations which are specifically provided for by Article XXI thereof.

XXIV.

All other claims and demands of the Territory of Dakota outstanding when this agreement shall take effect, the collection whereof is not hereinbefore provided for, shall be sued upon and collected by the State of South Dakota, and the costs of suits so brought and the amounts collected shall be divided equally between the two States of North Dakota and South Dakota.

And said Commission so assembled and acting under and by virtue of the authority upon it by said Act of Congress conferred, further agrees as follows:

1.

The following books, records and archives of the Territory of Dakota shall be the property of North Dakota, to-wit;

All records, books and archives in the offices of the Governor and Secretary of the Territory (except records of Articles of Incorporation of Domestic Corporations, returns of election of delegates to the Constitutional Convention of 1889 for South Dakota, returns of elections held under the so-called Local Option Law in counties within the limits of South Dakota, bonds of Notaries Public appointed for counties within the limits of South Dakota, papers relating to the organization of counties situated within the limits of South Dakota, all of which records and archives are a part of the records and archives of said Secretary's office; excepting also census returns from counties situated within the limits of South Dakota and papers relating to requisitions issued upon the application of officers of counties situated within the limits of South Dakota, all of which are part of the records and archives of said Governor's office).

And the following records, books and archives shall also be the property of the State of North Dakota, to-wit:

Vouchers in the office or in the custody of the Auditor of this Territory relating to expenditures on account of public institutions, grounds or buildings situated within the limits of North Dakota; one Warrant Register in the office of the Treasurer of this Territory, being the record of warrants issued under and by virtue of Chapter Twenty-four of the laws enacted by the Eighteenth Legislative Assembly of Dakota Territory; all letters, receipts and vouchers in the same office now filed by counties and pertaining to counties within the limits of North Dakota; paid and cancelled coupons in the same office representing interest on bonds which said State of North Dakota is to assume to pay; reports of gross earnings of the year 1888 in the same office, made by corporations operating lines or railroads situated wholly or mainly within the limits of North Dakota; records and papers of the office of the Public Examiner of the Second District of the Territory; records and papers of the office of the Second District Board of Agriculture; records and papers in the office of the Board of Pharmacy of the District of North Dakota.

All records, books and archives of the Territory of Dakota which is not herein agreed shall be the property of North Dakota, shall be the property of South Dakota.

The following books shall be copied and the copies shall be the property of North Dakota and the cost of such copies shall be borne equally by the said States of North Dakota and South Dakota, that is to say:

Appropriation Ledger for years ending November, 1889, and 1890, one volume;

The Current Warrant Auditor's Register,—one volume;

Insurance Record for 1889,—one volume;

Treasurer's Cash Book—"D";

Assessment Ledger—"B".

Dakota Territory Bond Register—one volume;

Treasurer's Current Ledger—one volume.

The originals of the foregoing volumes, which are to be copied, shall at any time after such copying shall have been completed, be delivered on demand to the proper authorities of the State of South Dakota.

All other records, books and archives which it is hereby agreed shall be the property of South Dakota shall remain at the Capitol of North Dakota until demanded by the Legislature of the State of South Dakota, and until the State of North Dakota shall have had a reasonable time after such demand is made to provide copies or abstracts or such portions thereof as the said State of North Dakota may desire to have copies or abstracts thereof.

The State of South Dakota may also provide copies or abstracts of such records, books and archives which is agreed shall be the

property of North Dakota as said State of South Dakota shall desire to have copies or abstracts of.

The expense of all copies or abstracts of records, books and archives which it is herein agreed may be made shall be borne equally by said two States.

II.

And this Commission further agrees that the two Commissions composing the same shall recommend to their respective Conventions for adoption as a part of the Schedule of the proposed Constitution for the State of North Dakota, and the State of South Dakota, respectively, the following, that is to say:

"The agreement made by the Joint Commission of the Constitutional Conventions of North and South Dakota concerning the records, books, and archives of the Territory of Dakota is hereby ratified and confirmed which agreement is in the following words, that is to say:" (And then shall follow the words of the Article last above written.)

In testimony and confirmation whereof, the said Joint Commission, now assembled and acting as such, has caused this agreement to be signed and executed by and on its behalf and as its acting deed, and witnessed by the names hereto by each subscribed and the members comprising said Joint Commission as hereinbefore cited.

Done at Bismarck, Dakota, this 13th day of July, A. D., 1889.

A. G. KELLAM,
HENRY NEIL,
W. ELLIOTT,
S. F. BROTT,
BURLEIGH F. SPALDING,
ANDREW SANDAGER,
HARVEY HARRIS,
V. T. McGILLYCUDDY,
E. W. CALDWELL,
CHARLES H. PRICE,
E. W. CAMP,
ALEX GRIGGS,
W. E. PURCELL,
JOHN W. SCOTT.

Mr. Kellam: Shall the report be read?

The President: You are the better judge than I.

Mr. Kellam: I do not care about it myself only that it has been properly presented in Convention so there will be no violation of propriety.

Mr. Lee: I think it would be well to hear part of it read.

Mr. Caldwell: There will necessarily be considerable time

consumed in consideration of the several points in this agreement and this would carry this session through to a later hour than I believe those members of the Convention, at least those members of the Convention who have just returned from Bismarck, without having had any sleep within the last thirty-six hours would care to remain here. I would therefore move you that this report be reported as received and that the reading be postponed until tomorrow morning.

This motion received a second.

Mr. Caldwell: I would say in connection with this fact that tomorrow morning's Press will contain a complete copy of this and members of the Convention will have an opportunity to read it and understand it more completely than would be the case by hearing it read.

Mr. Peck: It will appear in our Journal tomorrow morning will it not?

The President: Those favoring the receiving of the report of the Joint Commission this evening and postponing the reading of the same until tomorrow morning, say aye. Those opposed say no. The ayes appear to have it; the ayes have it and the motion prevails.

Mr. Peck: I move we adjourn until nine o'clock tomorrow morning.

Which motion prevailed and the Convention stood adjourned. Hall of the Constitutional Convention, Sioux Falls, Dakota, August 2nd, 1889.

Convention called to order at nine o'clock A. M.

President Edgerton in the chair.

Prayer by Chaplain Wakefield.

We marvel to ourselves, O God our Heavenly Father when we consider Thy infinite love manifested toward us. We come before Thee this morning to thank Thee for the favorable auspices under which we meet and we ask Thee, that in this, our closing work for the great commonwealth that we represent that nothing will be done that will mar or impede the future peace and prosperity of our beloved State.

May the chief desires of our hearts this morning be to honor Thee and serve our fellowmen, not only those who are today watching the progress of our work, but those who are to follow in our footsteps.

O Lord, give us this spirit this morning, we ask in Jesus' name.
AMEN.

The President. The clerk will read the Journal of the preceding day.

The Clerk reads the Journal.

Mr. Spooner: I move that we dispense with further reading of the Journal.

Which motion received a second.

The President: It is moved and seconded that we dispense with further reading of the Journal. Those favoring this motion make it known by saying aye. The ayes have it. Further reading of the Journal is dispensed with.

The President: I suggest to the Convention that I have a communication here this morning from the Superintendent of the Burlington Railroad, which the Clerk will read to the Convention. I thoughtlessly omitted it last night and it would be proper for the Convention to take some action one way or the other at once. Either by accepting or refusing to accept it or to refer it to a Committee so that something can be done with this.

The Clerk reads the communication as follows:

Sioux Falls, Dak., Aug. 1, '89.

HON. A. J. EDGERTON,

President Constitutional Convention.

On behalf of the management of the Burlington, Cedar Rapids and Northern Railway, I extend to you and the members of the Constitutional Convention and their laides, the courtesy of our road from Sioux Falls to Spirit Lake and return.

Yours most respectfully,

THOS. H. BROWN.

The President: What will the Convention do with the communication?

Mr. Davies: I move that the invitation that was extended to the Convention be accepted for Saturday evening.

Motion received a second.

The President: It is moved and seconded that we accept the invitation of the Burlington Railway Co. for Saturday evening. Those favoring the motion make it known by saying aye; those opposed, if any, by saying no. The ayes have it and the motion prevails.

The President: I would suggest to the Convention still further; this morning I met with the Senate Committee sent out here to examine the question of irrigation, Senators Stewart and Regan. They informed me that they could only spend the day in Sioux

Falls, they would be glad to meet a few gentlemen from the Convention, not many but a few gentlemen from localities scattered over South Dakota who could give them some information in reference to this question that they might embody it in their report and if convenient to this Convention they would meet us here at two o'clock this afternoon. I said to them that undoubtedly the Convention would be glad to accept of their proposition and that seven or eight gentlemen would be selected in some manner to answer such inquiries as they might suggest and present such information as they might desire.

Mr. Spooner: I move that the proposition be accepted.

Which motion received a second.

The President: It is moved that the Convention extend to the Senate Committee a cordial invitation to meet us here this afternoon at two o'clock. Those favoring the motion make it known by saying aye; those opposed by saying no. The ayes have it and the motion prevails.

Mr. Van Buskirk: I move that a committee be appointed by the Chair in accordance with his suggestion.

The President: It is moved that the Chair appoint a committee to furnish this information for the Senate Committee. Those favoring the motion make it known by saying aye; the opposition by saying no. The motion prevails.

The President: I would state to the Convention that I have received an answer to the memorial in reference to the School lands which the Clerk will read.

Clerk reads:

Executive Mansion, July 9th.

DEAR SIR:—

I am directed by the President to acknowledge receipt of your letter of the 2nd inst., enclosing memorial passed by the Constitutional Convention, both of which have been referred to the Secretary of the Interior.

I have the honor to remain,

Very respectfully,

O. L. PRUVEN,

Assistant Secretary.

The President: Unless otherwise ordered by the Convention I will direct the Secretary to read the list of Committees to ascertain what reports are yet to be made.

The Clerk: The Congressional and Legislative Apportionment.

The Chairman: The report is read.
J judiciary.
The Chairman: No further report.
Schedule.
No further report.
Name, Boundaries and Seat of Government.
No further report.
State County and Municipal Indebtedness.
No further report.
Executive and Administrative.
No further report.
Legislative.
No further report.
Bill of Rights.
No further report.
Election and Suffrage.
Nothing more.
Federal Relations.
No further report.
Education and School Lands.
No further report.
Municipal Corporations.
No further report.
Corporations Other than Banking and Municipal.
Nothing further.
County and Township Organizations.
Nothing further.
Revenue and Finance.
No further report.
Public Accounts and Expenditures.
Nothing further.
State Institutions and Public Buildings.
No further report.
Mines, Mining and Water Rights.
Nothing further.
Roads, Bridges and Other Internal Improvements.
No further report.
Exemptions.
Nothing further.
Rights of Married Women.

Nothing more.

Banking and Currency.

No further report.

Military Affairs.

Nothing further.

Amendments and Revision of the Constitution.

No further report.

Printing.

Report submitted.

Seal.

No further report.

Miscellaneous Subjects.

Nothing.

Compensation of Public Officers.

No further report.

Arrangement and Phraseology.

Will report this afternoon or tomorrow.

Manufactures and Agriculture.

No further report.

Expenses of the Convention.

Mr. Huntley: I would like to say to the members of the Convention that I hand in today the statement and if they find any inaccuracy that they will report it to the Committee. It does not agree very well. Some distances traveled are nearly one-sixth more. It is the desire that the members look over their reports and hand them to the Committee and if they find any error that they will do so as soon as it may be done.

Engagement and Enrollment.

The report is not ready.

The President: I have designated this Committee to meet the Senatorial Committee at two o'clock this afternoon. I have, so far as I have known, tried to select men who have some practical experience with the question of irrigation. The Clerk will read the list.

The Clerk reads:

Dr. McGillicuddy, of Pennington; Mr. Peck, of Hamlin; Dr. Spooner, of Kingsbury; Mr. Couchman, of Walworth; Mr. Hall, of Sulley; Mr. Houlton, of Douglass; Mr. Eddy, of Miner; Mr. Murphy, of Hanson; Mr. Wood, of Spink; Mr. Cook, of Marshall; Mr. Wescott, of Deuel.

The President: The next order of business will be the communication and presentation of petitions,—next Unfinished Business of the preceding day,—reports of Standing Committees; reports from Select Committees; consideration of reports of select Committees; presentation of resolutions and propositions relating to the Convention.

Mr. Jolley: I offer the following resolution:

RESOLVED: That the president of the Convention have the custody of the debates until the Legislature shall order and provide for their publication, and that he, with Hon. A. G. Kellam and Hon. H. F. Fellows, shall prepare the same for publication and cause the same to be published.

The President: Is the Convention ready for the question? As many as are of the opinion that the resolution be adopted, say aye; contrary minded say no. The ayes have it; the resolution is adopted.

The President: The next business in order will be the consideration of the balance of the report of the Committee on Schedule, beginning with Sections 19 and 20.

Mr. Williams: By consent, the amendment that was offered by myself was divided into two parts; the first is that which changes the date from 1892 to 1891 affecting the term of office of the State officers and the Legislature and that which affects the judges I wish to withdraw with the consent of a second and of the Convention; the question before the House is that which changes the date from 1892 to 1891 and effects the State officers and members of the Legislature making the term of office of the members of the Legislature expire in January, 1891.

Mr. Jolley: This question I do not think is a very material one; that is I do not think it is as material as the one we discussed last Friday afternoon; still I think we had better be careful how we decide this question. The difficulty originating in the mind of the gentleman from Bon Homme and those who view the matter exactly as he does, is the question whether this is an election under this Constitution or not, if it is an election under this Constitution then there can be no question as to the terms of the State officers. And if it is not an election under this Constitution I do not know what kind of an election it is. The question is dispensed, (disposed of) that is, (if there is) any doubt if we look at what this Convention has done already relative to the Schedule report and if the members will turn to Section 7 which was discussed fourteen or fifteen hours last Friday, they will find a provision which sets this matter at rest. "The

election herein provided for shall be under the Constitution here-with submitted." There can be no question about that language; it is plain and without ambiguity. And the Convention last Friday afternoon decided that this election on the first day of October shall be an election under this Constitution. Now, Mr. President, if that is correct, then the conclusion is irresistible that this being an election under the Constitution, these officers are provided for under the Constitution; and the Governor and State officers shall be elected for two years. The Omnibus Bill says we can provide for a full set of officers. Then where do we get any other provision for electing these officers; there is not a single word as to what officers we shall elect; not a single provision or word in it stated as to what officers we shall elect; then it comes back to this Constitution it having provided that such and such officers shall be elected; then it follows as a conclusion that they shall be elected as provided by the terms of this Constitution and it shall govern. There is nothing concerning a half year or fourteen months or twenty months; the Constitution says that we shall have such and such officers and that same Constitution says that they shall be elected for two years; then if the Constitution has made the rule that this first election shall be under the Constitution there can be no question as to that. Then Sir, so far as the judicial officers are concerned there is no particular ambiguity, no particular doubt, and no uncertainty; the Constitution says that under the provisions of this Constitution judges shall be elected who shall hold office for four years after the first election; that election is under the Constitution because we cannot under any provision of the Organic Act elect any judges; we must act under the Constitution. In the proceedings yesterday we provided such and such judges now if we do not get these State officers from that Constitution we do not get them any place. If we elect those officers and those judges under the provisions of the Constitution all of the terms provided for in that Constitution must be fully carried out. It is that Constitution or nothing.

This Schedule is a very important thing in its place, but after this Constitution is adopted and we are admitted as a State into this Union, I doubt whether a person will say anything more about this Schedule. This is a bridge to carry us over from a Territorial to a State government; only that and nothing more; having done its work it ends right there. Again I wish to call the attention of the Convention to this fact; it is a very serious legal question. There

may be complications that will arise, if you deviate from that Constitution in a single particular. This is a violent presumption, Mr. President, but I will make the assumption,—suppose I was elected Governor at the election on the first day of October 1889 (laughter) and that you go to work and amend this Schedule as provided by this amendment, and the gentleman is elected next year; the first Tuesday of January 1891 he comes to me and says, "Here, old man Jolley, your time's up, walk! I say "No Sir, Mr. Williams, the Constitution that the people adopted on the first day of October says that I shall hold office for two years; for two years I am going to remain here or until such time as the Supreme Court of South Dakota says "Walk", then I will go and not until then." This complication is not far-fetched, it stares us in the face and we are liable to meet if it we go to work and elect a man governor,—if you elect me Governor for two years, I serve my time out. It is easily settled,—this difficulty; the other way you have that complication. The logical conclusion is that we elect a Governor, no doubt about that; we shall elect that Governor for two years, no doubt about that. Now this Convention goes to work in this Schedule and says, we shall elect for fourteen months, if the amendment is adopted. Then in that event I say if we come before the Supreme Court, the Supreme Court will say "You have said in Section 7 that this election is an election under the provisions of this Constitution; then the provisions of this Constitution shall govern it in every respect. There is no question in my mind about it, Mr. President, gentlemen will differ; we are constituted differently. There is a clear, plain provision in the Constitution as to what shall be the terms of office and when we leave the Constitution we are at sea.

Mr. Dickinson: I would like to say a word on this because I have a good deal of interest in it and on the side of those who have offered the amendment that is, in my heart, my preference. I was a member of the Schedule Committee and also of the sub-committee who passed upon this provision and when we first agreed it was that the terms of the officers should be a short term and that there should be a general election of all officers in 1890. I was satisfied with that and gave very little attention to it but afterwards when the other members of the sub-committee and the lawyers and myself came to the conclusion that it would be illegal to have the term two years and have a general election of state officers in 1891. Again I opposed it. Then I gave it more careful consideration and came to

the conclusion for the time being that they were right ; it would have to be two years' terms and the election of State officers in the odd year. I concurred with the report and submitted it to the Convention all my sympathies are with the other side. I talk on this side because I think we are obliged to take this position. The terms "under the provision of the Constitution" and the term "after the admission of the State into the Union"; I ask the closest attention of the Convention to these two terms. Unquestionably these terms are used in the Constitution of 1885 "after the State is admitted into the Union." It provides for the election of the judges and other officers at the first election held under the Constitution manifestly they intended there a distinction between these two elections, election under the provisions of the Constitution, and the first election after the admission of the State into the Union. The argument was based yesterday on the division of these terms, that this was not an election under this Constitution, the first election after the admission of the State into the Union would be an election under the Constitution. Mr. President, I would ask the Convention's attention to this. What was meant by the framers of the Constitution of 1885 by the expression, "under the provision of this Constitution? They said that the Judges should be elected under the provisions of the Constitution; as a matter of history when were the Judges elected? As a matter of history when was the Constitution voted upon? The officers were elected then so when the Committee was appointed to call the election they understood that the first election was the election that the Constitution was voted upon. They were just exactly at the point we are today, and if that was an election under the Constitution, this is an election under the Constitution on the first of October. If it is not an election under the Constitution it must be an election under the election law. The qualification of electors provided by the Constitution of 1885, for that election was not held,—the first election in 1885 was not held under its provisions but under the Territorial law, just as ours will be this fall. But it was an election under the Constitution in this sense that it was an election to fill the offices for which the Constitution had made provisions; all the State offices which it would be necessary to fill. We have a historical definition of what an election under the Constitution means that they had contemplated a distinction between that election and the first election after the State had been admitted into the

Union, when county officers are to be elected. You will see at once that the framers of the Constitution of 1885 undoubtedly provided for two elections. One at which the State officers and judiciary should be elected and one at which the county officers should be elected. They provided for those elections. I say to the members of this Constitutional Convention that those distinctions are matters of history. You cannot possibly go behind them.

Section 5 of article IX refers to county officers the question also of general election is referred to in Article VII Section 4 where it says, "All general elections shall be bi-ennial". I ask the attention of the gentlemen who are on the other side to that provision of that section. What is meant by that section of Article VII? "All general elections shall be bi-ennial?" Is it, as argued by the gentleman from Hand last night? The Convention contemplated a general election according to the definition which says for convenience it shall be understood all general elections shall be on even years. Well, will it necessarily follow all the elections shall be bi-ennial? It would be like putting in a section saying that these terms shall never be less than two years because according to that definition it must come on even years. If I understand it, if that is put in it makes this difficulty possible, that when the even year comes around somebody would say this: "This is the general election, these State officers ought to be elected now if they are elected on the odd years therefore they put in this section providing that all other elections shall be bi-ennial. And that State elections also should be bi-ennial. They should come on the odd years. I deny that: You will find everywhere there is that provision for two elections. There is not a member on the floor this morning that doubts that if the State had been admitted under the Sioux Falls Constitution there would have been an election of State officers in 1885 and following in 1887 there would have been another election of State officers and in the even year there would have been an election of county officers. This is a matter of history. We know what year the Constitution was framed, what year they elected their first officers and if they had been admitted we know what year they would have gone into office. We know they would have held two years and this year would have been the year for the election of State officers. This prepares the way for an argument which to my mind is conclusive in this matter unquestionably. The Constitution of 1885 made it necessary that there shall be a general election each year. On the

odd year of State officers, on the even year of county officers and saying that it makes provision for it. That being so, we have a provision distinctly made for two elections by the Constitution that we are sitting here to modify. Now, a change of the Constitution is contemplated by the amendment offered. To adopt that is actually to change the Constitution; it is surely an amendment to the Constitution; it is a more complete change and radical change or amendment of the Constitution than anything that has been before offered here since the Convention has been in session. It is something absolutely beyond our power. We remember that every member upon this floor has been arguing that we must be careful to not exceed our power.

Mr. Hartley is called to the chair by the President at this point.

Mr. Dickinson: You will provide for an election of State officers on the even years and you would provide for an election every once in two years. In my estimation it is wrong. I would be glad to have it the other way but we have no power to change it; it is best to leave it to the Legislature. It is not the office of the Convention to amend the Constitution in the Schedule and that is just exactly what we would be doing if we adopted this amendment.

Mr. Woods (of Pennington): I do not desire to attempt to add much to what has been already said. It seems to me some objections to the amendment are not well founded. One argument is that this Convention has already determined that this coming election, this October election, is under the Constitution. Now if we have so determined it, it would be crossing the bridge before we come to it. In the first place we have not the authority to determine it. In the second place we take issue with the gentleman that we have not so determined it. I commence at the beginning of Section 7 of the Schedule report.

Mr. Hole: You have the old copy; the corrected copy is different.

Mr. Woods: "The election provided for herein shall be under the provision of the Constitution herewith submitted, and shall be conducted in all respects as elections are conducted under the general laws of the Territory of Dakota except as herein provided." I was not aware that this Convention had taken this action but even if the Convention had taken that action, I ask it now for the benefit of the Convention if they have acted wisely. I would like to have this election held under the provisions of that Constitution

using the expression, "Under the provisions of the Constitution", does not strengthen the position any. The election is held and our authority for calling the election at all is under the provision of the Omnibus Bill that makes the rules and regulations for that election. Now, if these words are contained in the Constitution we can adopt that so the election will be held under the rules of the Constitution. I submit this, Mr. President, this election cannot or will not be under the Constitution. Why? Because we have none, we have no Constitution as yet; it must be resubmitted for ratification on the first day of October. We have no Constitution under which this election can be held; none whatever. We hold the election, then, under the provisions of the Omnibus Bill; we cannot hold the election under the Constitution because we have none under which to hold it.

What is the term of office for the Governor, fixed by the Constitution? Why is it two years? Members of the Legislature? Two years. To illustrate; if this section is held under the Constitution and they execute the duties of their office under the Constitution,—and of course they will have to qualify under it, then we will have two regular sessions of the first Legislature.

Now let us see how we make this out. The Schedule and Ordinance provides that they shall hold the first session of the Legislature sometime in October, the third Tuesday of October; limited to what they shall do. Then the regular session will take place in January, hence there will be two regular sessions of the Legislature under the Constitution.

Mr. Clay, from Jolley, or Jolley from Clay (laughter) illustrates the difficulty we shall encounter by supposing he should be elected Governor. It strikes me, one year or a little over would be sufficient—long for a demonstration of that character. (Laughter). I do not hesitate to say that it would be sufficient. (Laughter). But this is a departure; the Constitution declares that the general elections are bi-ennial. At the time that the Convention of 1885 assembled there was a law upon the statute books, and is yet, defining and declaring what the general election is. At that time this election coming upon the even years. That Convention was a Convention of Dakotans; they were citizens and presumably familiar with that provision of the statutes. It is not for us to presume that the Convention did not use the words "general" in the sense in which it was used in the statutes of the Territory at

that time "the general election shall be bi-ennial, there being a statute declaring when the general elections should be held and what a general election was. They used the term "general election" in the same sense that the Legislature used it. If that is true, if we presume that the Constitutional Convention of 1885 acted with reference to the statute of the Territory in putting in Section 7, referred to by my friend from Codington, if we presume that they acted with reference to that provision of the statute, then we can have no doubt as to what they meant by using the term "general election". It meant an election falling upon the even numbered years; it does not seem to me that we should presume or even act on the presumption that the Convention of 1885 presumed or did so foolish a thing; but they intended to do reverence to the customs of the Territory and they used that expression under, and in the same light of the statute. If that Constitution declared general elections are bi-ennial and if we can find the use of the word general when used in that statute then general elections must be bi-ennial and on the even numbered years; then if we now should provide for the election of these State officers to go over until the fall of 1891 we would have a general election on an odd numbered year. In other words there would be elected officers who can only legally be elected at a general election. We would be providing for their election annually, an annual election; that is where the distinction lies. The Constitution provides with reference to the election of certain county officers that they shall be elected at the first general election after the Constitution takes effect. Very well; now, this Constitution will probably take effect during the year 1889, we will probably be in the Union as a State under this Constitution before the end of October that is what they calculate upon. Then if each election is a general election then we shall elect all the county officers and the State officers in full in November; that will be the first general election under the Constitution because there is an election in November and we make it a general election.

I think, gentlemen of the Convention, you can see that every county officer elected last fall for two years, who qualified and is in possession of his office, would question your authority to oust him from his office or provide for an election to fill his place in November, 1889. I do not think we could do so in view of the fact that the Constitution has provided all the general elections shall be bi-ennial. Then it is not competent for us to change the election

from the even numbered years to the odd numbered years. You have no right to cut off their term of office. It would lead to a chaotic condition of affairs and unless there is some reason for this founded in argument more strongly based than any I have heard, I think we had better not provide for a contingency of that kind. There is not any provision, I say, contained anywhere for our doings here or for acts we have performed except those found in the Omnibus Bill. That being so, we provide for holding the coming election under the Omnibus Bill for filling the office of Governor under the Constitution and any Governor elected under the Constitution his term of shall be two years and if elected under the provisions of the Act of Congress, that fixes his term; in other words the Constitution fixes the term of all offices under the Constitution upon coming into the Union as to the separation of the question here, I desire to call attention of the Convention briefly to some provisions of the Constitution in reference to that. In Section 26 in Miscellaneous, under Article V the provision is that: Sec. 26. The Judges of the Supreme Court, Circuit Courts and County Courts shall be chosen at the first election held under the provisions of this Constitution, and thereafter as provided by law, and the Legislature may provide for the election of such officers on a different day from that on which an election is held for any other purpose, and may for the purpose of making such provision, extend or abridge the term of office for any of such judges then holding but not in any case more than six months. The term of office of all Judges of Circuits Courts, elected in the several judicial circuits throughout the State, shall expire on the same day." Their terms of office are fixed by acts of legislature; they may shorten up their terms and they may provide for an election at a different time. Of course if this Constitution is ratified, but if it is rejected, no matter how many different officers we elect, they will fall with the Constitution—everything goes down with it. The Legislature has the power to fix a different election time for the Judges and they, in so doing, cut down those terms fixed upon. The Legislature may do so, then so far as the Committee's report and Section 19, I think the figure four need not be stricken out for the reason that, by taking off six months from the tenure of office the Legislature may provide, and it seems to me in this way that the Legislature will be more liable to provide for our Judges being elected on a different date from that upon which any other officer is elected and it seems

to me if we can induce the Legislature to provide for the election at a different time than that upon which any other officer is elected, it is a most desirable thing to do. It seems to me that the Judges should not only be elected on a different date but that they should be nominated in convention at which no other officer is nominated, not to subject the judiciary of our state to grow into political convention and rustle in the barter and trade common in such gatherings. Then I say that wisdom directs that we should leave the figure four in the report in the section as the Committee have made it; but in the other section of the question as to the figure two coming out, we have no possible authority to let these officers hold until 1892 and have an election in 1891. If they hold until 1892 they should hold until the first of January 1893. The Constitution provides the general elections shall be bi-ennial. But gentlemen say, we shall have an election between for our officers because they are to hold each year. He says the general elections shall be bi-ennial and that means biennially annual. I never heard that construction contended for before. Biennial means, in fact annually. The election shall be biennial and annual. A general biennial election and that annually. It don't seem that construction,—

Mr. Davies, of Edmunds: Mr. President, if this Convention has committed a blunder in adopting Section 7 of the Schedule, that is no reason why we should now continue it throughout the succeeding sections. Right in connection with what the last speaker has quoted to us from Section 24 of the Omnibus Bill, I will read only a few lines:

"That the Constitutional Convention may, by ordinance, provide for the election of officers for full State governments, including members of the Legislature and Representatives in the Fifty-first Congress."

And reading in connection, also, with that, a portion of Section 8 of the Omnibus Bill, as follows:

"That the Constitutional Convention which may assemble in South Dakota shall provide by ordinance for re-submitting the Sioux Falls Constitution of eighteen hundred and eighty-five, after having amended the same as provided in Section 5 of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, eighteen hundred and eighty-nine."

Now, the honorable and Jolley member from Clay, asserts, as

if it was absolutely so, that we are laboring under the Constitution, but where is the argument to establish that assertion? The election of next October is authorized right here in these two sections 24 and 8 of the Enabling Act. Without this there would have been no election this fall, and there is nothing in the Constitution warranting or authorizing an election this fall. Now then, with reference to the two expressions, "under the provisions of the Constitution and "after the admission of the State". The argument in reference to those two statements would have some force were it not for the fact that one of these is the very amendment to Section 7, which section a large proportion of this Convention voted against. If the Convention was correct, then this would have some force now, but the question now is, are we correct? Again, as to the historical argument adduced here; that in analogy fails. Why? Because the state of things existing prior to the Enabling Act have no bearing on the state of things as they now exist. Suppose, Sir, for the sake of this argument—and we find it is so—that the Enabling Act and the Constitution do not tally—that there is a conflict of authority between the two; then which shall guide us? Suppose for a moment that the Enabling Act and the Constitution which we are about to adopt conflict with reference to some of the details in these election matters. Which one of these two are we to follow? Which is our guide? Who for a moment can say that a thing which shall come into existence next October, provided we vote for it, has greater force than the enactment of Congress passed some long time ago and which is today the law of the United States? The Constitution which we shall vote for next October is not yet in existence, as has already been said. The breath of life will not be in that Constitution until next October. There is no question but what we shall vote for it, as a State, but it is that contingency that exists. The situation of today is not a reality; it is something which we are going to make a reality next October; and I don't see how anyone can for one moment say that that has binding force today over and above the Enabling Act which authorizes and gives us the power, and without which we would have no election next October.

Now, as to the conveniences resulting from the two, I don't think the conveniences are what will govern us in this matter. If that point is settled, which can be determined only by the vote of this Convention, the amendment provides for the settling of these

differences; it brings about the two elections on the same year, and on the even numbered years. The people of this Territory have already decided that it is their choice that we should not have elections every year, but the provision of this Constitution—of this Schedule—is now that we shall have elections every year, contrary to the expressed wishes of the people of both North and South Dakota. The amendment provides for putting away that great objection. It is an objection that is universal; it goes right down into the pocket of every voter and every property holder in South Dakota, and this is one reason why the people object to this perpetual election every year, not only for the expense of the business, but the inconvenience to the people of the State. It seems to me that the amendment disposes of that objection and that the amendment is grounded both upon authority and law and that the original schedule is wide of both of these.

I will not take more of your time, for I know that quite a number of the gentlemen present have studied this question and are in favor of this amendment, and I will give way to them.

Mr. Caldwell, of Minnehaha: I understood, Mr. President, by something said by the gentleman from Pennington, that there was a likelihood of the statutory definition of "general" and "annual" elections cutting some figure with reference to the question in hand; and if this is to be the case it may be well for the Convention to know that the Territorial statute giving a definition of the terms "general election" and "annual election" has been repealed some two or three sessions of the Legislature ago. There is not now properly upon the statute books of this Territory any law undertaking to give a definition whereby the term "general elections" shall have any reference to even-numbered years, or the term "annual election" to odd-numbered years. It is a fact that the statute as originally enacted, has a place in the compiled Laws of this Territory, but it is a fact that it was placed there with the expectation of having it specially re-enacted by the Legislature, in order that there might be this distinction, and the matter was brought to the attention of the Legislature last winter, but it went to wreck. The act asking that this be re-enacted did not get through nor come up for consideration. So I simply call attention to the fact that there is no Territorial statute giving any special significance to the term "general election".

Mr. Boucher, of McPherson: Mr. President, on that question

it seems to me that the Compiled Laws of the Territory of Dakota as they have been published and approved, will be the best authority that we can have upon the subject, and I understand there is no question but what the Compiled Laws of the Territory—(Cries of "louder, louder"). I say there is no doubt but that the Compiled Laws of the Territory today do make that distinction; that the general elections are the elections held on the even-numbered years, and the annual elections held in the odd-numbered years. Now, where the gentleman from Minnehaha gets his authority for saying that that is not the law of the land, is something I can't see. It is his authority against the law of the Territory as adopted and approved by the Governor.

I did want to come up here loaded, but these gentlemen who have preceded me have stolen my thunder. However, there is one thing I do want to say in connection with the remarks made by Mr. Jolley from Clay. He bases his authority that this election is held under the Constitution from the language found in Section 7. Now, what is a general election? If I understand a general election, it is the election whereat the general officers of the State are elected. Now, Section 20 of this Schedule offsets Section 7, because it says that the first general election under the provisions of this Constitution shall be held on the first Tuesday after the first Monday in November, 1890. That is what Section 20 says, and I say that that is right. That is right. The first general election that we will have under the provisions of this Constitution will be in 1890, provided this Constitution is ratified next fall and provided the President sees fit to issue his proclamation. Thus we will have an election, and then we will have the first election under the provisions of the Constitution. This election is the bridge that takes us over until the first election under the Constitution I believe that this amendment ought to carry. We certainly have a right to do it; we certainly have a right to elect our provisional State government to hold over until the first general election under the Constitution, and it is certainly in consonance with the good judgment of the whole people that that should be done.

Mr. Humphrey, of Faulk: Mr. President, in the debate on this question I am impressed with the fact that has confronted us from the beginning, that we are a body of seventy-five people deprived of the ordinary sovereign power, hedged about on the one side by the Omnibus Bill and on the other side by the Constitution, and

every question depends upon our power, and not upon this question whether or not this election is under the head of "general" or "annual" election. I am surprised that those who compiled the present Territorial law inserted in that volume a law on the supposition that it would be enacted by the next Legislature, which I don't regard that as material to the question before us. It seems to turn and hinge upon the question whether this first election, on the first of October, is under the Constitution or whether it is under the authority of the Omnibus Bill. While it seems to me clear that it is under the authority of the Omnibus Bill, in one sense of the word, it seems to me clear that without the Constitution it would be void and that the officers we elect and the terms for which they are elected are void and without effect in any way unless the Constitution is adopted, but if the Constitution is adopted they are in full force. If that is not true, what was our position in 1885? We had no Enabling Act at all. Would anyone hold that those officers elected at that time were not elected under the Constitution? Now, I am free to confess that I have listened to the debate from beginning to end without deriving information therefrom sufficient to cause me to be convinced one way or the other, and therefore in this, as in some other matters before the question, I find it necessary to do what I think best. The measure being necessary, or whether it is expedient or whether it is consistent with our desires, is not what must control us in this question. It is a question of power, and if it is, as I believe, an election under the Constitution, the officers should be elected for the terms prescribed by the Constitution.

Now, in the year 1885—that was one of the years—the gentlemen who made that Constitution provided for that election, and it would appear to be an intelligent and candid interpretation of the Constitution thus made by those who provided that Constitution, to say that they did provide for an election annually. Now, some object to that, and possibly with good reasons, but that is not the question; others favor it for what they believe to be a good reason, but that is not the question. I find no provision in the Omnibus Bill that necessitates an amendment of the Constitution relative to the terms of the officers elected thereunder, and unless we can find it we have no right to change those terms; and, as much as it may be regretted, it does seem to me now that this Schedule Committee have compiled the Schedule in conformity with the pro-

visions of the Constitution. I therefore insist upon voting for the report of the Schedule Committee as it now stands.

Mr. Davies, of Edmunds: Mr. President, I would like to ask one question. Under the provisions of our laws as amended, we have one qualification for voters, and under this new Constitution we have another. It is, I think, in the Constitution ten days, and twenty or thirty days under our present law. If the question comes up—if some one is challenged at the election next October, which law shall be followed? Is there any question but what the law of the Territory, as amended, would govern in this matter, rather than the law of the Constitution, which declares that a man need only be in the precinct ten days? Now here is one question that comes right square and fair; here is a question you must explain, and I will simply ask now, which one of these two are we to follow? If not under the Constitution, then it so something else; which of the two is it? I think that will satisfy the question.

Mr. Humphrey, of Faulk: As I understand the interpretation of the Constitution, it is that all laws of the Territory are in force, except as modified by the Constitution. Consequently, this election being held under the Territorial laws, they would be only in force in regard to the State officers we have no Territorial law pertaining thereto whatever. Consequently, the procedure of the rules and regulations in the election for the adoption of the Constitution are in no manner effected, because the Constitution is the beginning of all matters pertaining to the officers and their terms under the Constitution. We come in contact with Territorial laws here, and we are between the laws and the Constitution. While we as a body, are powerless to repeal or alter any Territorial law, and we are powerless to repeal or alter the Constitution, if there is a question of law as to the results, it is a question for the courts and not for us to determine.

Mr. Sterling, of Spink: Mr. President; it seems to me like a strange construction to say that because Section 7 provides, and because there are certain provisions in the Constitution like this: "The election provided for herein shall be under the provisions of the Constitution herewith submitted"—I say it seems to me like a strange and a narrow construction, in one sense, to say that that shall pertain not only to the election provided for under the Constitution but to the term of office as well, of any officer provided for in the Constitution, and I don't believe the language

warrants any such construction. I think that in a sense we do elect these officers under the provisions of the Constitution, in this, that we elect the identical officers provided for in the Constitution; and it cannot be said that because the language is that the election shall be as under the provisions of the Constitution that it pertains to the term of office of the officers elected under this provision. It may be, and I believe in this connection it would be construed to apply simply to the officers elected, and not to the term of office. I think it has been frequently provided in Constitutions, or rather in the Schedules and Ordinances of Constitutions adopted, that the elections for the first term, or the elections under the provisions of the Constitution shall be for the shorter term, in order that it may be at the general election as theretofore held in the Territory, or in the State in the case of the adoption of a new Constitution by a State. That is, that first term, under the Constitution formed, or under a new Constitution, is regarded in many cases as initiatory or provisional, and if general elections had been theretofore held on the even-numbered years, the first terms of the officers were regulated accordingly, so that the elections thereafter might be at the even-numbered year, as they were under the Territorial form of government, or, under the old Constitution. I find in the Constitution of Nevada that it is provided that the terms of the State officers shall be four years, and I find, not in the Constitution, but in the Schedule and Ordinance it is provided that the first term of the officers shall be for two years, and so I think that with that in view, it is competent for this Convention to say in the Schedule and Ordinance that the election for the first term may be for a shorter term, in order that it may conform to the elections as theretofore held.

Mr. Dickinson, of Day: Mr. Sterling, you were a member of the Constitutional Convention of 1885.

Mr. Sterling, of Spink: No, Sir.

Mr. Dickinson, of Day: I will ask you if the Constitutional Convention of 1885 would not have said so, if they intended the first to be the short term?

Mr. Sterling, of Spink: I don't know that it was necessary for them to have said so.

Mr. Dickinson, of Day: Do you understand that the first term provided for was the short term? Were they elected for two years each, or for one year?

Mr. Sterling, of Spink: I think they were, as a matter of fact, elected for two years, but in regard to the gentleman's construction of the term biennial, in which it is said that general elections shall be biennial, in the Constitution, I can't answer that better than the gentleman from Pennington did, and it seems to me ridiculous to say for an instant that all general elections shall be biennial, and at the same time make provision that shall make all general elections annual, or giving us annual elections, as it would according to the gentleman's construction. I think it is plain from the Constitution of 1885 that they did have the general election in view, and I think so from another reason than appears from the face of the Constitution itself. It provides that county officers—at the first general election after the admission of the State into the Union, certain county officers shall be elected. Then, whether it is law now or not, the general election came upon the even-numbered years. They had that in view and they had in view the fact that the terms of the county officers elected under the Territorial term would expire at that time, so that the election would come at that time, and that is evidence, and the only evidence, of what they considered a general election, namely; the election that should come upon the even-numbered years. And I believe that, taking the whole thing together, that in connection with the rest of the Constitution, it is plain that they meant not only the election of the county officers, but the election of State officers, as well, to be at a general election. The mere fact that in the body of the Constitution, naming these different State officers, it is provided that their terms shall be so long—two or four years—I say does not prevent us, in initiating the government, to limit their terms so that their election shall come at a general election.

In conclusion, let me say, we have the power to fix the tenure of officers, however elected, for the power to elect by implication gives us the power to fix the term; the greatest always includes the lesser. While we cannot fix a three-year term, we may fix a one year term, and I say the power to fix and provide for the election of the State officers carries with it necessarily the power to provide for the tenure of office, if we desire, a different and a shorter period than the period fixed in the Constitution. We cannot hold this election under the Constitution; if we could, there would be no necessity for this discussion; the Constitution would answer every question that has been asked here. The Constitution provides it

shall be under the laws of the Territory according to this provision. It is a special election that we are providing for—not a general election or an election of any sort except a special election under the authority of the Omnibus Bill.

Mr. Van Buskirk: of Codington: Mr. Chairman, I would like to say just one word. It seemed to me that, so far as this declaration in this Section 7 was concerned, it was a very insane thing, because, how we can hold an election under a Constitution when we haven't got any, is one of the mysteries I am not able to solve. Suppose, if you please, which is not likely to happen, that the people should not adopt this Constitution on the first day of October; could you have an election under the provisions of a Constitution that never had any existence? We all know that neither a law or a Constitution can speak except from the date of its passage or adoption. No law of this Territory can speak except from the date of its adoption by the Legislature. Suppose a man should do an act which is innocent under the law today, and suppose a week from today a man should do an act which the Legislature in the meantime has declared criminal; could you convict him? Why certainly not. It is all nonsense. It is a very insane provision. You might as well say that a rose is a tulip; it wouldn't make it so. The gentleman from Minnehaha, who was one of the compilers of our law, does not suggest to you that that law was not in force in 1885. We all know it was in force then, and so it would not signify whether it was in force today or not. They were simply using the language of the law as it existed at that time. This Constitution has not now, nor never can have any existence until the people adopt it.

Mr. Dickinson, of Day: Mr. Chairman; I am talking against my wishes all the while in this matter, and I am very earnest in the matter on account of my convictions being that the Constitution and law is against my wishes. It seems to me we are in danger of making one of the gravest mistakes, if we adopt this amendment. I would be glad to see the substance and the intent of that amendment in force, but I believe if we adopt that there we shall make a great and grave and serious mistake, which we shall be held accountable for. With all respect for the legal learning of these gentlemen in this matter, I can't understand how they arrive at such a construction of this Constitution;—an election in which the Constitution was voted upon at the same time that they voted for State officers; and I maintain that by an election under this

Constitution is simply meant this—it was an election to fill the offices for which the Constitution made provision. The Constitution provided for the election of a Governor, a Lieutenant Governor; it provided for the whole list of State officers, and the whole list were elected. It was in that sense a general election. It was a matter of history that they so called it and they held such an election and elected such officers, and it seems to me we cannot get behind that definition, which is a matter of record and not a matter of guess. There is one other point that it seems to me these speakers have evaded, and that is this question: If you adopt that amendment and make your elections once in two years, is that a virtual amendment of the Constitution, or is it not? That is a simple question. There can be no question but that the Constitution of 1885 provided for two elections. There is an older definition of the term "general election"; there is a definition of "general" and "general election" which makes it to mean an election which is general in its cause and effect; not merely as to State officers. Each of these elections may be biennial—every two years, upon the odd year; every two years, upon the even year. But is this an amendment to the Constitution, or is it not? The Constitution provides for an election every year. By this amendment you will make this election come once in every two years, and I would like to see it, but the question is, friends, is it right? Have we the right to do it, or shall we leave it for the Legislature to submit an amendment to that effect?

Mr. Wood, of Pennington: If we are empowered in this to provide for the election of certain officers, have we not the power by necessary implication, to fix the tenure of those officers if we fix it less than that provided for in the Constitution?

Mr. Dickinson, of Day: It seems to me if we follow the officers provided for in the Constitution, we must follow it for the terms provided for in the Constitution.

Mr. Van Buskirk, of Codington: Why can't we make it three years instead of less?

Mr. Dickinson, of Day: Make it just what the Constitution provides.

Mr. Willis, of Aurora: Mr. President; I feel I have reached that point where I have acquired the requisite legal information which will enable me to vote intelligently upon this subject. My impression is that this would be a good time to take a vote. I seem

to feel that the atmosphere is charged with the sentiment upon the part of the majority in favor of the amendment. There are several points that have been made here that lead me to this conviction in favor of the amendment. One of them is the knowledge that we are a BRIDGE! It is a fine figure, and I think it is a figure that represents a fine fact. We are a special body, for that special purpose. I like this provisional idea that is suggested. We are to make a PROVISIONAL PROVISION! A conditional provision for the adoption and the assumption of all the effects and functions of statehood. We are to provide for the setting-up of a regular and orderly statehood housekeeping. And I like this idea that we are a bridge, and we are a special body and that we have no special powers, which leads us and others to the conclusion that we have the authority for the adoption of the amendment. And way back of that, the reason that has been so spoken of here—a sentiment that comes from my neck of the woods, namely; a feeling that if expressed would say, "From the abominations and distractions and the demoralization usually attendant upon a general election, good Lord deliver us just as much as possible." Let us be delivered from the demoralization and from the extra expense, if we have a real substance or authority for it, by the adoption of the amendment—the extra expense and demoralizations of annual elections. Give us only biennial elections.

Now, I hope that either the vote will be taken right now, while I think the majority feeling is in favor of the amendment, or that, if the discussion proceeds, that a vote will be taken right after some lawyer makes a strong speech in favor of the amendment! I want you to take in view this fact, that preachers and those having the political proclivities of my friend from Pennington, have no political roads to run, and we are trying to act in the best interests of the greatest number. I hope the vote will be taken

Mr. Hole, of Beadle: Mr. Chairman; before this vote is taken I want to, in a brief way, show how we arrived at these conclusions, but before branching on that theme, I wish to say that my friend who has just preceded me has a wrong idea of our duties. We should first learn what our powers are, and second, if there is any possible question of power, take that side on which there is none—not attempt to build ourselves up or to build our opinions up by some fine-spun theory of law to support a prejudice or wish, but rather go back and study the facts—our powers—and if there is

doubt, go on the safe side. The Constitution has pointed a course, and, while there is a fine-spun theory that we cannot elect under the Constitution, I think, gentlemen, when considered, you will see that we can. This election, if not under the Constitution, is nothing. If that Constitution falls, the election is nothing. The only other possible source of power is the Omnibus Bill. The Omnibus Bill don't provide for any term of years or any salary. It says you may on the first day of October have an election. You don't even have to have the election at that time, unless you wish to. Now, we will start back with the original Constitution made here in 1885. The Constitution was made in 1885 and there was an election held the following fall. Was that a provisional election? In the Schedule and Ordinance as provided for in 1885 it does not state the term of office of anything of the kind. The officers were elected under the provisions of the Constitution. The election of Governor Mellette and other officers elected at that time was for two years. Their construction of it was biennial, which was a general election. They were elected under the Constitution of 1885 and to hold to 1887, and again in 1887 they would have another election, and the officers then elected would hold to 1889, and then our election would have come in November, 1889, if it had not been for the Omnibus Bill, which gives us the authority to hold our election in October. There is not a question but what that was intended; there is not a question but what the Supreme Court was elected for the full term, as provided in that Constitution. The Schedule nowhere indicates any other term or kind, and I think anything short of this will be in the nature of an amendment to the Constitution. We voted on this in May, and we must stand right to the text, which is provided in the Omnibus Bill. This Omnibus Bill nowhere provides for any such change as this. Does that provide that we can change the Constitution and have it read one year and three months, or anything of that kind? It doesn't do it. Then where do we get the power, unless we assume it? I take it, if we assume that power we amend the Constitution. The Omnibus Bill says we must elect officers as provided for in the Constitution. Now, if we don't follow that law we amend the Constitution, which is unsafe and dangerous.

Mr. Sherwood, of Clark: When would the general election have occurred under the Constitution of 1885?

Mr. Hole, of Beadle: There was two elections provided in

1885, and there was one provided, and it was held, and it would have been valid for all purposes if we had been admitted, and there was another election provided for in 1887. There were no conditions in the Schedule—no provisions for any provisional government. The officers were elected for the two years and the four years. That was regarded as the first election under the Constitution.

Mr. Wood, of Pennington: Let me ask you, if we adopt the report of the Committee, then will we necessarily have to elect sheriffs, treasurer's and other county officers at the election in November, 1889?

Mr. Hole, of Beadle: I was just going to answer that question. The Constitution provides that at the first election certain officers shall be elected. Now, that election was in November, 1885. They held for the two years. Now, a little further along the Constitution provides—when it comes to county officers it makes another provision, and it says at the first general election after the admission of South Dakota into the Union. Now, we all know that they intended that the Territorial officers should hold until the next fall—the county officers, until the fall of 1886. They elected their officers and were all ready to put the machinery in motion, and expected to do that between the first day of December and February following. During that winter sometime they intended to be admitted—

Mr. Wood, of Pennington: How is it about our members of Congress; will we not necessarily have to elect again in the fall of 1890 two members of Congress?

Mr. Jolley, of Clay: That is provided for by the United States law.

Mr. Hole, of Beadle: That is not necessary for us to discuss here. That is provided for. We can get at that.

They held their election for State officers in 1885. The intention was to hold the next election the next fall. They say, when they come to speak of county officers which the Territorial law provided for, that they shall be elected at the first election after the admission of South Dakota. Well, their term of office expired on the next year—on the even year—and it provides they should be elected that year; and I think when you come to discuss this matter and to consider the history of this, there is no question but what there were two elections provided for; and the word "biennial"—you can speak of that as ridiculous, but it is not. The tenure of the offic

shall be biennial,—both State and County. The tenure of the State officers was to commence on the odd year. They were elected in odd years and there is no provision in the Schedule to level that up. Then there was intended right along a biennial election for the State officers, and that was to be on the odd years. And for the election of county officers, it was also there provided that it should come on the even years, and the elections on that should be biennial.

Mr. Van Buskirk, of Codington: Will you advise us when the terms of the members of the Legislature and the State officers begin under the Constitution?

Mr. Hole, of Beadle: Under the Omnibus Bill we have our election in October and the members of the Legislature meet directly afterwards to do certain duties, but the functions of their office, as law-makers, does not commence until after we are admitted. There is a conflict there between the Constitution and the Omnibus Bill.

Mr. Van Buskirk, of Codington: Do they not exercise the functions of a Legislature?

Mr. Hole, of Beadle: They do, under the Omnibus Bill, but no further.

Now, gentlemen, I like this idea of a bridge, too. I think it is a pretty thing, but let us not bridge or trench. Let us do what is intended to be done, and if we have a creek that is only ten feet wide, let us build a ten-foot bridge, but not a two-months bridge. You could make this bridge unwieldy and cumbersome, but let us bridge just what the people who have sent us here want us to do. It is always a pleasant thing to feel that you have power, but let us not do an unsafe thing here.

Mr. Sterling, of Spink: Do you think the election as provided for in the Schedule and Ordinance of 1885 is any indication of our power at all?

Mr. Hole, of Beadle: It is a circumstance that shows how they interpreted the Constitution. We have the same Constitution now, exactly. The Enabling Act gives us no power to change that. It does not say we shall elect the Governor and State officers for any other time than the two years referred to. The gentleman from Pennington says the greater includes the less and the power to elect gives some other powers, but if that is so and we can change the term and all that, we can change the salary, we can change their

age and the color of their hair! It is ridiculous to take that position. We can elect the officer as provided for in the Constitution, and nothing else, and anything contrary to that will lead us to endless confusion and possibly to endless litigation. Now, I think the better feeling of the Convention is that if there are two ways, one which is safe and one in which there is a possibility of a doubt, take that course, even though you don't want to. This can be corrected by an amendment and can be corrected at any time, and my idea is to correct that.

Mr. Wood, of Pennington: Then you conclude, as I understand it, that Sheriffs and the like must be elected in November (October?), 1889?

Mr. Hole, of Beadle: No, Sir; I just said they should not. I think I have explained that—that we were following out the interpretation as made by the framers of the Constitution of 1885. They intended to hold their elections on the even years. We will be admitted this winter and we will hold the election as provided under the Constitution, and the Constitution clearly and expressly provides for two elections, and there we get the two elections. There is no possible confliction of doubt in that. I think this is unsafe; we might make up various arrangements; we might make the Schedule entirely different. I don't think it is the time now to experiment. Let us take the plain course. indicated in the Constitution and we will be safe.

Mr. Huntley, of Jerauld: Mr. Chairman; I simply want to say a word. Some gentleman has asked in regard to the views of the Committee of 1885 that framed the Schedule. I wish to say, as a member of the Committee, that there was no such dispute as this arose in that Committee at all. It was the intention of the Committee to make the elections biennial and not every year. I think that is what every member of the Schedule understood and thought they were doing. I don't think that question arose in the discussion in the Committee at all. In fact, the hopes and fears were evenly balanced, and the effort of the Committee was to do something so good that it would recommend it to the judgment of every man.

Mr. Hole, of Beadle: Under the provisions of the Constitution of 1885 when did you expect to elect the county officers?

Mr. Huntley, of Jerauld: Well, that question did not arise in the Committee.

Mr. Hole, of Beadle: It must have arisen. The common sense of any man would suggest it.

Mr. Huntley, of Jerauld: Well, they didn't have any! The idea was that they would hold their offices until the expiration of their time—that the first officers would hold until the general election. Nothing of disputation, however, arose in the Committee on that point, but from the fact that it was fixed that the election should be biennial, and no arrangement made for curtailing or extending the term of the county officers, my understanding of it was that the general election would come at the time when the county officers' terms expired.

Mr. Hole, of Beadle: Let me ask you another question. Then the election of county officers would be on the next fall after the election that was held for Governor?

Mr. Huntley, of Jerauld: Certainly.

Mr. Hole, of Beadle: Well, how long did you elect Governor Mellette and the other officers for at that time?

Mr. Huntley, of Jerauld: I don't think it was specified. I think the understanding was, until the next general election.

Mr. Hole, of Beadle: There is no possible doubt but what you had an intention at that time. I know I had too much faith in the Committee at that time to think that they didn't intend something.

Mr. Huntley, of Jerauld: Well, I think they intended to elect Governor Mellette until the next general election. However, the question was not in dispute there at all. It was not made a point or a question or an issue at all in the Committee, but I think that was the understanding, and taken for granted, and I know that it is the idea of the people. The question was asked me more than a dozen times before coming here to this Convention, whether the Convention would be likely to fix for a general election this fall, and if the county officers all should be elected this fall, or whether the county officers would hold through their term and a general election of county and State officers be held a year from this fall, and no one ever broached the question to me at all as to whether the election should be made annual. They all interpreted the Constitution to mean that our election should be biennial—that there should be an election only once in two years. I did not meet the first individual that ever thought anything else, or broached any other thought to me.

Mr. Neill, of Grant: Mr. President—

The President, pro tem: Mr. Neill, of Grant.

Mr. Lee, of Spink: Mr. President; I think every member's mind is made up and—

The President, pro tem: I recongized Mr. Neill first.

Mr. Neill, of Grant: Mr. President; I am somewhat reluctant to give the Convention some light on this mooted question of how the Convention of 1885 viewed this matter of general elections, from the fact that I am afraid it is different from what I would like to have it; but, notwithstanding that, as it will be a matter of information to you, I would simply state that the question was not much discussed in 1885 whether or not we could make the State elections co-incident with the general election. We were too fearful at that time of encountering the opposition of any organized body in the new State and finding its adverse influence against the adoption of the Constitution, and we handled those things very gingerly, and that question was perhaps never raised in the Committee further than to be mentioned and passed by, for the simple reason that they did not wish to antagonize our county officers throughons the new State. It was not intended that the general electiout should be changed, but that county officers should hold their full term of two years and be re-elected at the regular election under the Territorial laws. The question as to the election of the State officers under the Constitution—I would not construe it that they were elected under that Constitution as by authority—as by provision of manner, but that the Constitution itself had no authority consequently the manner prescribed by the Constitution was adopted as a mode or manner of election, the authority coming from the Convention itself. But now as to the tenure of those State officers; they were elected and no specific time fixed for their term other than the general provisions of that Constitution. They were elected in 1885. We did not expect to be admitted inside of six months. That would leave them a year and a half of the two years for which they would be elected at that time. That was considered in itself sufficient for the first State officers of the new State, if we were fortunate enough to be admitted at that time, but the supposition was that they were elected for "during the war". The supposition was that they were elected for two years under the Constitution—that would bring the year following the regular election under the Territorial laws.

Now as corroborative of this, you will notice that in Section 24 of the Schedule and Ordinance it reads as follows:

"The first legislature assembled, after the adoption of this Constitution, shall have the power to continue in session longer time than sixty days, or to adjourn from time to time, and re-assemble at the call of such officers as they may prescribe, until the State shall be admitted into the Union, or their term of office shall expire."

That is their term of office might expire before they were admitted into the Union. Now, granting that their term of office must expire at some prescribed period, namely, two years as prescribed in the Article on Legislative and Executive, that would be true of any other State officers. When we held an adjourned session of the Convention of 1885, at Huron, the two years were approaching completion. It was thoroughly discussed at that time, and planned for another election in the fall of 1887, and I think that the "Executive Committee" as provided for in this Schedule and Ordinance, was instructed at that time to call that election of 1887 to re-elect the State officers and legislators, but that was never carried out, owing to the weak prospect, as I might say, of our admission and of the success of our movement. It was so discouraging and so unpromising that it was not supposed under the Democratic administration then that we had any hopes under the Sioux Falls Constitution, and I suppose the authorities, under those circumstances, failed to call that election in 1887; but it shows what the intention of the framers of this Constitution was as to the tenure of office; namely, that they intended it should be for only two years, and if we were admitted that there should be another election to re-endorse them in their offices.

Mr. Williams, of Bon Homme: Mr. Chairman; we find the argument based upon this portion of Section 7: "The election provided for herein shall be under the provisions of the Constitution herewith submitted." Now, I happen to know the history of that phrase as it came from the lips of its author. It was proposed in a meeting of the Committee on Schedule and Ordinances, after I had stated my views in this matter in accordance with what I have stated here on the floor of this Convention. I considered then and I consider now that my views were unanswerable, in the position I took, and in order that the Chairman of that Committee might bridge over the difficulty that these facts originated, he gave notice then and there that he would offer as an amendment, these words,

that this election is under the provision of this Constitution; and that is the history of that phrase in this section. And I will say further that this provision has been adopted by this Convention; it was adopted by this Convention through an oversight. I had an amendment ready, but in the scramble last Friday night that was adopted when I was not paying particular attention, and I understand that when other gentlemen had read this up this week it struck them as peculiar that this Convention should attempt to do anything of that kind, and they told me they proposed to offer an amendment to strike out as being considerable nonsense.

Now, what is meant by this section 26 of Article V? "The Judges of the Supreme Court, Circuit Courts and County Courts shall be chosen at the first election held under the provisions of this Constitution." I take it that that phrase means that at an election to be provided for by law, which election must have the legal force and authority of law, and not that this Convention, by Ordinance, may extract "provisions", by the wording of the phrase "of this Constitution" and put it in the Ordinance and thereby make it under the provisions of the Constitution. The phrase means this, that when that Constitution becomes the organic law of this State, then any law that the Legislature may pass in pursuance of that organic law, calling an election, whether at that election provided for in the Constitution, or by the Legislature, it is that the election will be under the Constitution. The phrase means this; "**UNDER THE AUTHORITY OF THE CONSTITUTION**". Not the mere words extracted and put into some other instrument and called "under the Constitution". It might be under the wording of the Constitution, but it could not be under the provisions. It means, when that provision becomes the organic law of this State. If there is any provision made for the election before the general election, then these officers shall be elected at that election. Then the Constitution contemplated this; that if the Legislature, having power by virtue of this Constitution, calls an election at a time other than at the general election, that these officers may be elected at that time; and that same section makes provision that the Legislature under the authority of the Constitution—not under anything else, and under no other body—but that the Legislature, under the authority of the Constitution, may abridge or extend the time of the Judges of the Court who shall have held the office of judge at the time the Legislature acted—that they shall abridge or extend the time six

months. For what purpose? For the purpose of making provision that the Judges of our Courts may and shall be elected at a time different and other than at the election at which our county and State officers are elected. That is a good provision. But then, that would be an election under and by virtue of the authority of the Constitution, and I claim that that is just exactly what the phrase "Under the provisions of this Constitution" means. It means, under and by virtue of the authority conferred by this Constitution.

Now, what is the condition we are in here today? What is the argument of the gentlemen who take the opposite view and maintain that this is for the election on the first of October? I claim we might just as well say we can hold an election on the first of October, on the fifth day of October, or at any other time we see fit to call an election. We can assemble and vote, but would our votes be counted? There must be an election fixed by competent authority. What authority has fixed this election for the first of October. It is fixed by Congress; that is the body that fixes this election. Then Congress goes on and says in the Enabling Act that this Convention may by ordinance provide for the election of officers. Does it say a "Dictator" or a "Commander-in-Chief", or some other officer not provided for? No, Sir; it looks into the Constitution and sees what officers are therein provided for when we become a State, and it says that this Convention, BY ORDINANCE, —not by the authority of the Constitution; that is a dead letter; —but that this Convention, by ordinance, may provide for the election of these officers provided for in the Constitution—the officers fixed in the Constitution. But does it say they shall be elected for any particular length of time? It says the officers provided for in your Constitution may be, by ordinance, provided for their election at this time and no other time. Now, the officers provided for are the Governor, Lieutenant-Governor, Judges of the Supreme Court and other officers. Their term of office is fixed—the term of Governor, Lieutenant-Governor and other State officers and the members of the Legislature. But the term of what? The term of the Governor ELECTED UNDER THE CONSTITUTION; the terms of the other State officers, ELECTED UNDER THE CONSTITUTION. I take it that these are the identical officers provided for. They are gentlemen elected to fill the offices provided for in the Constitution but not elected under the Constitution. Why do we do this? For this;

if we adopt this Constitution on the first of October, we have an organic law, and in order that the laws of the State may be operated we must have officers. Suppose we did not elect a Legislature and State officers. We would not have one single agent to carry that government into operation. We would not have State officers to execute the laws. Then it is absolutely necessary that this State government shall go into operation and that we elect a provisional set of officers in order that we may start and maintain that government in operation until the State government, by the chosen agents of the people, may operate and set in motion the government, under and by virtue of the people thereof. We must elect these agents at that time, but not under the Constitution. We only elect them to take their places under the Constitution.

I have taken some pains to inform myself outside of the work of the Committee on Schedule. On night before last, in Yankton, I met an old gentleman who was a member of two Constitutional Conventions in Wisconsin. He told me that that was the only practice that they had and that he knew about, that the Convention, by ordinance, only provided for the terms of officers and legislators until the State could be put into operation, and after that they went on and did it under authority of the Constitution. I have sought to find somebody that has been in constitutional conventions. Then my argument is this: That this being an election not under the Constitution, that the terms of the officers are not bound by the Constitution, that they are provisional; it is a provisional election and the terms of officers elected at that election shall be provisional, and no other. I say there is not one syllable, from beginning to end that provides for but one election. It makes provision that the Legislature may provide for another election; that the Legislature has authority under this Constitution to provide for another election than the general election. But that election is not here provided for. The Constitution passes over to the Legislature the power to provide for it; then the only election provided for in this Constitution is the general election. And if this report, as it comes from the Committee, is adopted, instead of the amendment—an amendment to the report being an amendment to the Constitution—the Legislature has the discretion to provide or not to provide for this other election. That is virtually an amendment to the Constitution and you might just

as well add a section here, because the power is here, and you can't get around it.

One gentleman says it is going to drive us to trouble and expense, under that phrase in the Constitution. I say if there is any hole through which this Convention can crawl to beat down and prevent a general election every year, this Convention ought to expect it and make provision for it. The sailing is clear, however, and it is only clear in that direction. It must be provided for as this amendment contemplates, or else we are all tangled up. The Legislature, if it sees fit, can call another election. If the people don't see fit to have another election, they need not have it; if they don't need it, they don't need to have it.

And now, with the consent of my second, I will withdraw that part of my amendment which relates to the election of Judges, and I wish to say one word on that. If the report as to the election of Judges, as it comes from the Committee, is adopted, at the general election it will be necessary for the Legislature to provide for the election of the members of the Courts at a different time, but it will be necessary that they be elected at a different time in this amendment, and that is why I withdraw it.

Mr. Wood, of Pennington: As the seconder of that amendment, I will consent with reference to striking out the figure "4" after figure "9" is Section 19.

(Cries of "question, question, question".)

Mr. Jolley, of Clay: Mr. President; I had some notes here this morning as to what arguments I should present to the Convention for voting against the amendment of the gentleman from Bon-Homme, but some gentleman, either the gentleman from Pennington, or somebody else, hooked my memoranda.

All I have got to say is this; that the gentlemen who offered the amendment have tried to blind the Convention. If you pass this amendment you elect a Legislature in 1889, and then you elect them in 1890—sessions of the Legislature in 1890 and 1891. You gentlemen who are opposing these officers holding their offices for two years, do it on the ground of economy. Now, if an election don't cost very much where you elect a Legislature, then it don't cost very much where you elect State officers; and if you think the sessions of the Legislature don't cost very much, look at the last session of the Legislature; and in the language of one who was cast on a desolate island and who seemed not to have much hope in this

world and none in the next, I exclaim, "From the rocks and sands and barren lands and two sessions of the Legislature in succeeding years, good Lord, deliver me!"

Mr. Boucher, of McPherson: Mr. President; a gentleman raises the question, do we by adopting this amendment proposed by the gentleman from Bon Homme, amend the Constitution? I give the answer for what it is worth, that we certainly do not. Nobody pretends that we do, because we have got no Constitution to amend. The Constitution provides that these officers shall hold for two years. How can we, by ordinance make that consistent with the Constitution? We can only have officers elected for two years and have the elections come biennially by electing these officers at the next general election. That is the only consistent way we can arrive at it.

(Cries of "Question, question, question.")

Mr. Williams, of Bon Homme: Mr. Chairman; I move the previous question upon the amendment.

I withdraw the motion and ask that the main question be put.

Mr. Hole, of Beadle: Mr. Chairman; I will ask for a call of the roll.

The President, pro tem: The Chairman of the Schedule Committee moves the adoption of Section 19; the gentleman from Bon Homme moves the amendment that the word "1892" be stricken out and the word "1891" be inserted in its place. How shall you vote? (Cries of "Roll call, roll call".) Those in favor of the amendment will answer aye, and those opposed no, as their names are called.

The roll was called.

The President, pro tem: The vote stands 36 ayes and 36 noes. The amendment is therefore lost.

Mr. Hole, of Beadle: Mr. Chairman; I move you the adoption of Sections 19 and 20, as reported.

A Delegate: I second the motion.

The President, pro tem: All those in favor of the motion to adopt Sections 19 and 20, as reported, by the Committee on Schedule will signify it by saying aye; opposed, no. The ayes have it, and the motion prevails.

President Edgerton resumed the chair.

Mr. Hole, of Beadle: Mr. President; I move you that the report of the Schedule Committee, as a whole, be adopted.

Mr. Kellam, of Brule: Mr. President—

Mr. Hole, of Beadle Mr. President; I will withdraw the motion for the present. There is an addition to be offered by the Commission from North Dakota.

Mr. Brott, of Brown: You mean from SOUTH Dakota.

Mr. Hole, of Beadle: I ask that this motion may be made to include the recommendation of the Committee from North Dakota, and I would ask for the reading of that part asked to be included in the Schedule and Ordinance.

Mr. Brott, of Brown: Please say from "South" Dakota; we don't want to be understood as from North Dakota!

Mr. Caldwell, of Minnehaha: Mr. President; that portion of the Schedule and Ordinance suggested by the South Dakota Committee on the Joint Commission is a part of the general agreement which has been submitted, and if it could be done it would seem to me it would be proper to hold open consideration of the Schedule until after the entire agreement has been submitted, because that portion of it that is recommended to go into the Schedule and Ordinance is incidental to the report itself.

Mr. Jolley, of Clay: Mr. President; I move that the report of the Committee on Schedule be laid aside, and that we take up the report of the Committee from the Joint Commission.

A Delegate: Second that motion.

The President of the Convention: It has been moved that the report of the Committee on Schedule be now laid aside and that the Convention take up the report of the Joint Commission. All those who favor this motion will say aye; contrary no. The ayes have it. We will now proceed to the consideration of the report of the Committee. Major Kellam, of Brule, I understand you wish to bring that up now?

Mr. Kellam, of Brule: No, Sir; I was about to suggest, upon the motion of Mr. Hole, to adopt the Schedule Committee report as a whole, that before action was taken upon that, the agreement, or so much of it as the Commission recommends should go into the Schedule, ought to be considered.

The President of the Convention: There is nothing before the Convention, as I understand.

Mr. Caldwell, of Minnehaha: Mr. President; the agreement has been presented to the Convention and is upon the Secretary's desk.

Mr. Huntley, of Jerauld: Mr. President; I move that we proceed to consider the report of the Commission.

Mr. Harris, of Yankton: Mr. President; I move as an amendment, that we incorporate this agreement which they have arrived at, in the Constitution. We have no right to consider it. It is our duty to incorporate it in the Constitution.

Mr. Hole, of Beadle: I second the motion.

The President of the Convention: It has been moved that the Convention now incorporate in the Constitution the agreement arrived at by the Joint Commission.

Mr. Kellam, of Brule: Now, Mr. President, I apprehend that there is not a perfect understanding of the thought suggested. The Enabling Act under which this Convention meets and this Commission was appointed, provides that the agreement reached by this Commission—this Joint Commission,—shall be incorporated into the Constitutions of the respective States. That much is certain, but what I had in my mind is suggested and arose by the action of this Convention upon the Schedule report, and it is this: After the Commission was organized at Bismarck and had begun its deliberations, it was developed that there was quite a lack of harmony in the Commissions of both North and South Dakota, as to the powers of that Commission with reference to the disposition of the records and archives of the Territory. There seems to be a conflict between Sections 5 and 6,—Section 5 declaring that the records, books and archives of the Territory shall remain at Bismarck, the capital of North Dakota, until an agreement is reached regarding the same by the States: Section 6 provides:

'It shall be the duty of the Constitutional Conventions of North Dakota and South Dakota to appoint a Joint Commission to be composed of not less than three members of each Convention, whose duty it shall be to assemble at Bismarck, the present seat of government of said Territory, and agree upon an equitable division of all property belonging to the Territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the Territory which shall be assumed and paid by each of the proposed states of North Dakota and South Dakota; and the agreement reached respecting the Territorial debts and liabilities shall be incorporated in the respective

Constitutions, and each of said States shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such States respectively."

We were unable to harmonize what was a disagreement among ourselves upon that point, and as a compromise and an agreement upon which we could unite, we, before any agreement as to the disposition of the records was made, passed a resolution that whenever an agreement should be reached each Commission should recommend to its Convention the incorporation of that agreement into the Schedule of the Constitution submitted by that Convention, so that it might be accepted by the people and thus become the agreement of the States. The point was, that the Joint Commission under the two Sections 5 and 6 had no authority to make absolute disposition of these records, or, that the authority which seemed to be conferred by Section 6 had already been limited by Section 5.

Now, the thought that I had was that we want to report to this Convention the agreement we have made with reference to the records and archives of the Territory, and also report to you the resolution that was passed by the Joint Commission, that that agreement should be made a part of the Schedule in each Constitution. It is not with reference to the agreement as to the debts and liabilities of the Territory that I now refer.

Voice: Well, that is not the question before the house.

Mr. Kellam, of Brule: That is the very reason I urge this thought.

Mr. Harris, of Yankton: My intention was to move that the agreement, commencing at the Preamble and ending with Article XXIV, should be incorporated into the Constitution. We have no control over it. I did not intend to include their recommendation about incorporating the agreement about the records in the Schedule. I do not think my motion was broad enough to cover anything but that ending with Article XXIV—the agreement, commencing with the Preamble and ending with Article XXIV.

Mr. Caldwell, of Minnehaha: Mr. President; it will probably assist the Convention in arriving at a conclusion upon the motion of the gentleman from Yankton, if the Convention will understand that there are practically three divisions of this Agreement in general which has been submitted by the Committee. There is that part of this agreement which refers to the debts and liabilities of the Territory; there is that part of it which is of general application,

and there is that part of it which refers to the public records. Only two of these parts are to be incorporated into the Constitution, or the Schedule and Ordinance. That part of the report with reference to the debts and liabilities must go into the Constitution. It is recommended that that part of it which refers to the public records, shall go into the Schedule and Ordinance; and there is no recommendation whatever in regard to that part of it which applies to public property and miscellaneous subjects. The Commission agreed upon what part of their general report should be submitted to the respective Conventions to be incorporated into the respective Constitutions. That is a different report from this general Agreement. The document which has now been conveyed to this Convention by the Commission from South Dakota includes everything that was agreed upon by the Commission, but in order that the Convention may have before it only so much of this report as it was decided by the Commission should be included within the Constitution proper, it will be necessary that there be another report from the Commission, which report will be ready, and made as soon as there shall be consideration of the report in general. So it would seem to me that the proper thing to do is to acquaint the Convention officially with what was the Agreement as a whole, which would be done by the reading of it at this time, or else by dispensing with the reading and regarding it as read, inasmuch as it is upon the desks of the members, having been printed in the Journal. It would then be competent to speak of these two provisions to which I have made reference, one of which is to be incorporated into the Constitution and the other of which is recommended to be incorporated into the Schedule and Ordinance. I will say that the agreement which has been decided shall be incorporated into the Constitutions, are Sections 1, 2, 3 and 4, and Section 10, I think, and 19 and 21; all of which refer to the matter of debts and liabilities, and they are the only Sections of the Agreement, as a whole, which refer to the debts and liabilities, and they are the only portions of the Agreement as a whole which the Omnibus Bill requires shall be incorporated into the Constitution.

Mr. Kellam, of Brule: I don't think I know exactly what is now pending before the Convention, but, whatever it is, I move as a substitute therefor, that the Schedule Committee report be amended by inserting, first, the matter found on page 12 of the

Journal (Page 144 of the bound Journal), commencing near the bottom of the page with the words, "The Agreement made by the Joint Commission" Etc., and including all down to the parenthesis; then following the Agreement that was made by the Joint Commission.

The President of the Convention: Mr. Harris, of Yankton, moves the adoption of the resolution to be read by the Clerk.

Read as follows:

RESOLVED, That this Convention do now incorporate in the Constitution the agreement of the Joint Commissions of North Dakota and South Dakota, commencing with the Preamble and ending with the close of Article XXIV.

The President of the Convention: To this the gentleman from Brule moves the following substitute:—

Mr. Harris, of Yankton: Mr. President, I rise to a point of order. It relates to another subject matter entirely.

Mr. Neill, of Grant: Mr. Chairman; Major Kellam, I think, is working under a misapprehension as to the nature of the motion the Convention is working under. It was decided that we take up that portion of the Agreement of the Commission which should be incorporated into the Constitution proper. That was the motion, I understand, of Mr. Harris, of Yankton.

Mr. Kellam, of Brule: I did not understand that.

The President of the Convention: The gentleman from Yankton raises the point of order that the substitute moved by the gentleman from Brule does not refer to the same subject matter. From the reading of the motions I am unable to determine.

Mr. Kellam, of Brule: Well, if the Convention is now considering another matter, of course the point of order is well taken and I will withdraw my motion.

Mr. Harris, of Yankton: Mr. President; it is under this provision of the Omnibus Bill that I make this motion: "And the Agreement respecting the Territorial debts and liabilities shall be incorporated in the respective Constitutions, and each of said States" etc.

Mr. Price, of Hyde: Mr. President; I was about to remark that while the Agreement reached by the Commission contains many other things besides the report relative to debts and liabilities—and I will state further, that the Joint Commission have passed and will present to the Convention at the proper time what in their

judgment ought to be incorporated in the Constitution—after a full and fair discussion of the whole they came to the conclusion that it would not be necessary—in fact, that it would be unwise and cumber the Constitution, to insert this Agreement in full, as contemplated by the gentleman from Yankton county, and they desire to insert so much as in their opinion would be necessary to insert in the Constitution. While it is true that the Omnibus Bill says that "The Agreement" etc., shall be incorporated, this report refers to many other things.

Mr. Harris, of Yankton: I would like to inquire if there is anything in that Agreement, commencing with the Preamble and ending with Article XXIV, that would be improper to put into this Constitution?

Mr. Price, of Hyde: I think not.

Mr. Harris, of Yankton: Well, if there is nothing there that is improper to go into the Constitution, I believe we had better put it all in at once and get rid of it.

Mr. Caldwell, of Minnehaha: Mr. President; it will of course be appreciated as desirable by every member of this Convention, that what goes into the Constitution of South Dakota in regard to this mutual Agreement, should be a counterpart of that which goes into the Constitution of North Dakota in regard to this Agreement, and the Joint Commission have prepared and will submit a report which was arrived at, both with reference to the Constitution of North Dakota and with reference to the Constitution of South Dakota, and which includes some matters not contained in the language of the Agreement as already submitted. For instance, it was necessary of course that there be adopted by both Conventions a section by which each State should assume the liabilities taken by each under the Agreement as arrived at; and this report to which I refer, which relates particularly to debts and liabilities, contains that, and it is already prepared. This is in the hands of the Chairman. But the proper thing, as it seems to me, is for this Convention to take up for consideration, by reading, this Agreement, or else by postponing the matter of Agreement and considering it read, the text of it being on the tables of the members. When that is done then there will come up the further report of the Commission, which includes only so much of this matter as was decided

by the Joint Commission should be incorporated in both Constitutions.

Mr. Clough, of Codington: Mr. Chairman; it seems to me this Committee ought to be allowed the privilege of making a report conveniently, and as it is now five minutes of twelve o'clock, I move that this Convention do now take a recess until two o'clock, when the Committee be requested to present a report as they desire so to do.

A Delegate: I second the motion.

Mr. Hole, of Beadle: Mr. President; isn't that hour occupied already by an arrangement to meet the Committee that come in regard to irrigation?

A Voice: We don't want to irrigate!

Mr. Caldwell, of Minnehaha: Mr. Chairman; of course I know that a motion to adjourn is not debatable, but then I know this whole matter can be disposed of in five minutes. If this general report is to be regarded as in the possession of the Convention, then there is no action in this Convention necessary upon that, and if the Committee—

Mr. Elliott, of Turner: Mr. President, I rise to a point of order. There is a motion to adjourn before the house.

The President of the Convention: This is not a motion to adjourn. It is a motion to adjourn and instruct, which I understand is debatable.

Mr. Caldwell, of Minnehaha: It will be regarded as being in and this report can be fixed up in five minutes.

The President of the Convention: The motion before the Convention is that we now take a recess until two o'clock and that the Committee appointed by the Convention of South Dakota to form a part of the Joint Commission be instructed to make a report at that time.

Mr. Kellam, of Brule: Mr. President; I would state that this Committee is ready to report, and it has been since the moment it landed here, if it only had the opportunity to report.

The President of the Convention: As many as are in favor that the motion prevail will say Aye; contrary no. The ayes appear to have it.

(Cries of "Division, division.")

The President of the Convention: Those of the opinion that the motion prevail will rise and stand and be counted.

The Clerk announced that there were 42 ayes.

The President of the Convention: There are 42 ayes and the motion prevails.

The Committee appointed to meet the Senatorial Committee this afternoon in this room are requested by the Chairman of the Committee to meet him immediately after the adjournment, and that there may be no mistake, the Clerk will read the list of the Committee again.

The Clerk read the names of the Committee; when a recess was taken until two o'clock P. M.

Two o'clock P. M.

The Convention convened and was called to order by the President.

Mr. Van Buskirk, of Codington, was called to the Chair.

Mr. Edgerton, of Davison: Mr. President; I voted this morning with the majority to reject the amendment that was then proposed. I have been informed during the recess that the loss of that amendment will render it necessary that all of the county officers throughout South Dakota shall be elected this coming fall. I did not so understand it when I voted. I have had no opportunity to examine it and I have not decided, but if there is a possibility that that construction can be placed upon it, why I want the amendment to carry. I told the gentlemen that I would move this reconsideration, so as to allow them the opportunity of presenting that themselves to the Convention. I voted against the amendment and for the report of the Committee, because it was the report of the Committee. I took it for granted that the Committee had examined it and were better prepared than I could be, but if there is a possibility that such a construction can be passed upon it—and Mr. Wood, of Pennington, tells me he believes that is the correct law of the case—, then I voted without understanding its effect, and I therefore move a reconsideration of the motion by which the Convention refused to adopt the amendment.

Mr. Peck, of Hamlin: I will second that.

The President pro tem: Gentlemen of the Convention, the motion before the Convention is to reconsider the motion by which the report of the Schedule Committee upon Section 19 and 20 was

adopted and the amendment rejected. Is the Convention ready for the question?

Mr. Elliott, of Turner: Mr. President; so far as I am concerned individually, I am not prepared to vote upon that question now. I would like to hear from some of the Committee upon that question. If there is a possibility, as has been stated by the gentleman from Davison county, for the election of all of these officers, I shall certainly vote for the reconsideration, but if there is none, I shall adhere to the vote I made on the question this morning.

Mr. Hole, of Beadle: Mr. Chairman, the gentleman from Pennington came to that conclusion, I think, without reading Section 5 of Article IX. Section 5 of Article IX provides this:

In each organized county, at the first general election held after the admission of the State of South Dakota into the Union, and every two years thereafter, there shall be elected a Clerk of the Court, Sheriff, County Auditor, Register of Deeds, Treasurer, State's Attorney, Surveyor, Coroner and Superintendent of Schools whose term of office respectively shall be two years, and except Clerk of the Court, no person shall be eligible for more than four years in succession to any of the above named offices.

Mr. Wood, of Pennington: That is exactly what did read.

M. Hole, of Beadle: Now, if there is no election provided for this fall, except in October—we are not to be admitted until after October—until sometime in November—why, it is an impossibility; there can be no officers elected until the next year. That is the intention. That is the understanding of every delegate and there can be no possible question on that point. If there is any question, that can be met without attempting to undo what has been thought to be the correct course, but there is no possible way in which these officers can be elected this fall. The provision as to all the State officers is as to the first election; the provision as to county officer is at the first general election after the admission of South Dakota into the Union. Now, there is no possible question there. There is no gentleman in this house who has any possible question as to what that means. It means that the election shall be held in November, the coming year. That is the first possible election under the Constitution. We cannot be admitted until after the time for the election of county officers has passed. There is nothing in the Schedule of Constitution which can possibly tend to any other conclusion.

Mr. Wood, of Pennington: I do not think it advisable on this motion to reconsider to argue the whole proposition.

The President pro tem:

Mr. Wood, of Pennington: Now, if the Convention desires to hear any further argument upon that proposition, then of course they will reconsider. I think the Convention would be acting wisely if they would support the motion to reconsider.

Mr. Lee, of Spink: Mr. Chairman; I am satisfied that we shall get into trouble in many ways and I don't wish to review all the ground that has been gone over here. There seems to be a distinction without a difference. My friend is talking about the beautiful bridge; the Omnibus Bill is the bridge over which we get to statehood, and it appears to me if we don't reconsider this that we have knocked the bridge all to pieces. I believe the gentleman to my left (Mr. Edgerton, of Davison) is correct. This law can be so construed as that we will have to re-elect all these county officers, and I will go heart and hand for the amendment.

The President pro tem: I will re-state the motion. This morning the Convention declined to amend the report of the Schedule Committee as to Sections 19 and 20, and the report of the Committee was adopted as to those Sections. Now the motion before the house is to re-consider that vote.

Mr. Jolley, of Clay: Mr. President; I call for the ayes and noes.

The President pro tem: The ayes and noes are called for. All those that are in favor of the reconsideration of the motion by which Sections 19 and 20 were adopted will vote aye, contrary no.

The roll was thereupon called

The President pro tem: The result of the motion to reconsider is 42 in favor and 16 against. The motion to reconsider prevails. What is the further pleasure of the Convention?

Mr. Wood, of Pennington: Now, Mr. President, I desire to call the attention of the Convention more particularly to the danger which we had—

Mr. Jolley, of Clay: Will the gentleman from Pennington allow me to ask a question of the Chair? Mr. President, what is the condition of the business of the Convention now? I understood the Chair to state that the vote by which those two Sections were adopted was reconsidered. The motion is therefore upon the adoption of those two Sections. That is the way I understand it.

Mr. Wood, of Pennington: I don't understand it so. I understand, Mr. Chairman, that the motion to reconsider reconsidered the whole proposition, and I understand that now the amendment to Section 19 is before the Convention.

Mr. Jolley, of Clay: You can't reconsider two questions in one motion.

Mr. Edgerton, of Davison: Mr. President; I think the gentleman from Clay is correct. I therefore move you, Mr. President, to reconsider the vote by which the Convention rejected the amendment.

A Delegate: I second the motion.

The President pro tem: The question is upon the motion of the gentleman from Davison to reconsider the vote by which the Convention rejected the amendment to Section 19. Is the Convention ready for the question?

(Cries of "Question, question".)

Mr. Hole, of Beadle: I think, as a point of order, that the mover of this motion voted against that amendment.

Mr. Edgerton, of Davison: That is correct, and that was the prevailing party. We succeeded; we beat the amendment! (Great laughter.)

The President pro tem: As many as are of the opinion that the motion to reconsider the vote by which the amendment was rejected, will say aye; contrary no. The ayes have it and the motion is carried.

Mr. Hole, of Beadle: Mr. Chairman; I do not wish to make a speech on this. I merely wish to read Section 20 of the Schedule and Ordinance, which provides: .

"That the first general election under the provisions of this Constitution, shall be held on the first Tuesday after the first Monday in November, 1890, and every two years thereafter."

That is the first general election. I will read it again, because I think this settles the whole question, so far as the question has been raised by the gentleman from Pennington.

"That the first general election under the provisions of this Constitution, shall be held on the first Tuesday after the first Monday, in November, 1890, and every two years thereafter."

Now then, Article IX—

Mr. Edgerton, of Davison, resumed the chair.

The President of the Convention: Mr. Hole, if you will allow

an interruption, I understand the Senatorial Committee are now coming into the hall.

Mr. Hole, of Beadle: I waive, with pleasure.

The President of the Convention: According to the order of the Convention this morning, there will be a recess now, in order that the Committee that was appointed by the Convention this morning to present certain facts to the Senatorial Committee might have an opportunity and also that they might present the delegates of the Convention to the members of the Committee, and during the recess, the Chairman of the Committee will preside—Dr. McGillycuddy.

Mr. Gillycuddy, of Pennington, took the chair.

The Chairman of the Conference: Gentlemen, is it your pleasure to be presented to the Senators now, or after the Conference.

Mr. Peck, of Hamlin: I should say now, Mr. Chairman.

The members of the Convention were thereupon presented informally, to the Committee, consisting of United States Senators Stewart, of Nevada, and Reagan, of Texas.

Senator Stewart: Gentleman, the Committee is here to get information. We want to know how you farmers are situated with regard to supply of moisture for raising crops, what the deficiency is and what the means are of supplying that deficiency by artificial means, artesian wells, stored water, rivers, etc., and we would like to have you go through rapidly, from different sections of the State, giving a short statement of the situation there—whether there is sufficient rain-fall, and if not, where you get water, or can get water, to supply that defect. To collect that information as rapidly as possible, we will hear those of you who have been selected from different sections of the State, right now, and the shorthand reporter will take it down, and if we do not get through during your vacation here, why we won't interrupt the proceedings of the Convention, but will go in one of the side rooms and hear any further persons who have any information to give.

A large number of the members of the Convention here made statements to the Senatorial Committee with respect to the lack of rain-fall in their respective localities and the urgent need of irrigation as a means whereby to supply the needed moisture.

The President of the Convention: The Convention will re-

assemble at half-past seven o'clock this evening, and in the meantime the Senators will make an address to the citizens and members.

The Chairman of the Conference: Gentlemen, I will introduce to you Senator Stewart, of Nevada, who will make you an address regarding irrigation.

Senator Stewart addressed the Convention upon the subjects of Irrigation and the Demonetization of Silver, and was followed by Senator Reagan, who occupied the attention of the Convention, briefly, with remarks upon the same topics.

The Chairman of the Conference: Gentleman, if there is nothing more to come before us we will stand adjourned informally.

Mr. Hole of Beadle: Mr. Chairman, as an expression of this Convention, I would move you that a vote of thanks be tendered the Senatorial Committee, for the time, consideration and attention they have given to our State.

The motion received a second, and, upon being put to a vote, was declared unanimously carried.

The Chairman of the Conference: Gentlemen, if there is nothing further, we will stand adjourned.

The President of the Convention: The Convention will meet at half-past seven o'clock, promptly, this evening.

Recess taken until 7:30 o'clock P. M.

The Convention reassembled at 7:30 o'clock P. M., and was called to order, with President Edgerton in the chair.

The President of the Convention: I will state to the Convention that I telegraphed Governor Mellette with reference to the question of pay of the delegates, this forenoon, and have received the following answer:

"Richardson has sent his Chief Clerk to settle Convention claims. Has no disposition except to accommodate and do everything in business manner. Train was late, so Clerk may not reach there till tomorrow. He will make everything right."

So it is evident he will reach here tomorrow night from Bismarck and settle with the delegates to the amount of the appropriation, I suppose.

It is evident to my own mind, from what I have seen today, that we cannot get through with the business of the Convention before tomorrow afternoon sometime, and that then the Clerk will have to take some hours to complete the enrollment, and that the

Constitution will not be ready for the signatures of the delegates before Monday forenoon. It is my own opinion that there is no possibility of our getting away from here until Monday afternoon or Tuesday morning.

The invitation that was extended to the Convention and accepted by the Convention to go to Spirit Lake tomorrow afternoon and return Monday morning probably will not interfere with our business here at all. Even if we finish our business by the middle of the afternoon tomorrow, it will take all of tomorrow afternoon and possibly Monday forenoon to complete the enrollment, so that we will be ready to sign the Constitution. It will therefore be possible for all the delegates that desire to, to be absent over Sunday.

The question before the Convention now is upon the motion of Mr. Hole that Sections 19 and 20 of the report of the Committee on Schedule, be adopted; to that Mr. Williams, of Bon Homme, has moved an amendment and the amendment is before the Convention. Is the Convention ready for the question?

Mr. Hole, of Beadle: Mr. President; I merely want to say this: It seems that this was reconsidered under a misapprehension of facts. The gentlemen from Pennington having conceived the idea, and having promulgated it after its conception, that there was a conflict and that the Schedule as adopted would compel an election of county officers this fall. By what process of reasoning, by what process of reading or by whatever process he may have reached this conclusion, I cannot guess, but I merely want to read the law as provided in the Schedule and I will call your attention to Section 20 as laid down in the Schedule.

That the first general election under the provisions of this Constitution, shall be held on the first Tuesday after the first Monday in November, 1890, and every two years thereafter.

And Section 5 of Article IX of the Constitution, reads as follows:

In each organized county, at the first general election held after the admission of the State of South Dakota into the Union and every two years thereafter, there shall be elected a Clerk of the Court,"—and then enumerating the county officers.

Now, the purpose of writing Section 20 was to leave that so there was no possibility of doubt, and if the English language can make it more clear, let us clear it up, but I don't think it is possible I don't think it was in the mind of any member of the Convention

that such a thing was possible. I think this reconsideration was, not exactly what we call a lawyer's trick, because lawyers never know when they are beat, but it was putting it somewhat in this way: A delegate was acting the part of an attorney in the matter more than acting the part of a proper reconsideration, unless the reconsideration would cover all the grounds. Now, under the reconsideration, as made, I understand the only question before us is the question of Section 20 in the Schedule and Section 5 of Article IX in the Constitution. I understand from the mover of the question to reconsider, that that is the only question before the Convention.

Mr. Wood, of Pennington: Mr. President; I will say now that I hope each member of the Convention will turn to Section 20 of the Schedule and Ordinance report, and if any gentleman of this Convention can tell me where we get the power or authority to make the declarations contained in that Section, then I will say I am wholly unable to construe the English language at all. That is pure, straight, unadulterated legislation. There isn't anything else about Section 20, except the purest legislation; it is not at all necessary to carry into effect the provisions of the Omnibus Bill; not at all necessary to enact, to go into the Union under this Constitution, and we have no authority anywhere for enacting it. Then I say that Section 20 should not be enacted by this Constitutional Convention, and for myself, I will never put myself on record as supporting a measure of that kind. What is Section 20? It is this:

That the first general election under the provisions of this Constitution, shall be held on the first Tuesday after the first Monday, in November, 1890, and every two years thereafter."

What right have we to say when the first general election shall be? Are we given the power to legislate? I think not in any sense or to any extent; but that is a very important legislative provision. Where do we get power to act? What is our mandate of that nature good for? Perfectly void and nugatory.

As to the election of county officers in November, I will not take up much time. I will call attention first, however, to Section 4 of the report of the Committee on Schedule and Ordinance.

All officers, civil and military, now holding their offices and appointments in this Territory, under the authority of the United States, or under the authority of the Territory of Dakota, shall continue to hold and exercise their respective offices and appointments until superseded under this Constitution."

Now, of course that would be the effect, in the absence of any provision of that kind. However, the provision is here and has been adopted; a very salutary and beneficial one. They shall hold their offices until superseded under this Constitution. When do we become a State? I will read the latter part of Section 8, of the Omnibus Bill:

And if the Constitutions and governments of said proposed States are republican in form, and if all the provisions of this Act have been complied with in the formation thereof, it shall be the duty of the President of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed States which have adopted Constitutions and formed State governments as herein provided shall be deemed admitted by Congress into the Union under and by virtue of this Action an equal footing with the original States, from and after the date of said proclamation."

Now I say this, and in connection with that read, I want to see what the Convention may think of it, that if on the first day of October, the Constitution which we submit, and that is, the Constitution of 1885 as amended by us under the Omnibus Bill, receives a majority of all the votes cast in South Dakota, then we are a State from and after that date. That is an accomplished fact; we are a State and have existence as such from that date, as soon as the last vote is cast, if there is a majority for that Constitution. Then we become a State by operation of law, at that instant. That fact is declared later, by proclamation.

Mr. Wood: My position is this: The Constitution declares Section 4 of Article 7 that all general elections shall be biennial. General elections as defined by the statute are biennial elections, they are both provided for by law. Yet, when we come into the Union under the Constitution that will be the primary law. It will take the place of the statutes. Hence the statutes which declares the annual election must give way to the Constitution because that provides that all general elections are biennial or should be. These elections are either. Being general, then the Constitution and Article IX says what shall be done. If this is a general election then it will be known as a general election after we come into the Union. Being known as a general election we have got to elect county officers. I think that is sufficiently clear. I think I have defined the reason that I take this position. In conclusion I desire to say this: The Constitution fixes the term of office of the Gov-

ernor at two years. The people of this Territory by practically unanimous vote ratified the Constitution and must ratify it again before it becomes our organic law. We are not under this Constitution, but will be after the first of October next, now, and that is the primary law after the first of October next then the tenure of office of the Governor and these other political officers is two years. If we have the power to extend the term twenty-seven months we can, with the same propriety and with the same legal force extend it twenty-seven years. There is not a particle of difference in the principle. If there is any difference in the principle I think that some member of the Convention would explain the difference to me for I am not able to detect it. But, they say "how are you going to cut their tenure of office down—that is under the Constitution?" I say in answer, we are not now under the Constitution. We derive our powers from the Omnibus Bill, not from the Constitution. The Omnibus Bill says we can amend the Constitution. All the power we have got is contained in the Omnibus Bill and where there is any doubt of our position we must look to them and nothing else. It prevents our amending the Constitution except in certain particulars and parts. They say you will have two elections. I say this, that there is no way of preventing it that I know of.

A Voice: Have the Legislature amend it.

Mr. Wood: I say we do not want to treat ourselves and our constituents in that manner. We do not want to cut the Constitution in that manner. You can avoid it by saying that the Governor and those other State officers shall hold their office until the first day of January, 1891. That is the way to avoid it; then we will elect them in 1890 when these other officers can be elected at the same time. That is general election under the statutes.

Mr. Caldwell: I can state it as a fact that there is no law in this Territory fixing any particular significance to the expression "general election" or to the expression "annual election". The original law was for a particular purpose. It was in order to bridge over a scheme in reference to some county organization. It was enacted that an election held on the even numbered years should be called general election and those held on the odd numbered year should be called annual election. That particular provision of the law which has been enacted or amended, Chapter 27 of the political Code was repealed,—the entire Section was repealed taking along with it, of course, the amendment of 1881. But it so happens that

there are places throughout the statutes where the term is used with a significance given to it by that section which was repealed. There was certain things prescribed to be done on general election, so that the compilers of the law, in order to establish the use of the term where stated retained this particular provision which has been repealed. At the last session of the Legislature they undertook to get it enacted, because it ought to be enacted, but it is not enacted. And by reason of its being in the compiled laws it is not law therefore. Because of the appearance of the statute in that place cannot make it law. Because all the validity which the compiled laws is merely that they are to be accepted *prima facie* evidence of the law as it is. But in the case of conflict the compiled laws and the special laws of any particular legislative assembly those special laws are to control and the compiled laws stand for naught. I say it is a positive fact that this statute defining general election and annual election have actually been stricken from the statutes of the Territory. I simply would say to the gentleman that if it didn't cut any figure he ought to know what the state of the case is.

Mr. Wood: I will not dispute the existance of such a law. I will declare I have never seen it. Inasmuch as the old act has been carried forward in the compiled laws it is *prima facie* evidence at least of the law of the land and we will take the *prima facie* evidence until we get something besides the word of the gentleman from Minnehaha county, because in legal matters the statutes themselves are evidence. The gentleman asks if my position will be changed if I could be shown that the Legislature did repeal the law of 1881 defining the difference between general and annual elections. I stated then that it would make all the difference in the world. I did not get the idea as I do now. It will make no difference because the statutes still provides for an election each year. The even years under the statutes of the Territory we elect County Commissioners, Justice of the Peace, etc. On the odd numbered years we elect under the Constitution, we will be under the Constitution when these elections become material or important. That election then, under the Constitution is the general election because it is biennial. I believe that will define the position that I have taken so far as the gentleman from Minnehaha is concerned.

Mr. Humphrey: I understood you to say that for the election irrespective of whether the President sees fit to admit us or not by

proclamation. Oh no, I say that we shall be admitted by Congress—admitted into the Union. Does the proclamation create a State? We created it ourselves under the power given us by this Act of Congress. The President proclaims the fact; it is by virtue of proclamation of the fact. Then we are deemed admitted to equal footings with the original States. The President cannot by proclamation create a State. He can declare the fact simply.

A Voice: When are we deemed admitted into the Union?

Mr. Willis: We are deemed to be in the Union as a State, we are a State before we are admitted.

Mr. Humphrey: You deem then that we are a State of the Union?

Mr. Caldwell: I will make this distinction, if the gentleman wishes to make an answer he has the right to the floor when I get through. I will state this: The President by his proclamation does not create a state. This is nonsense of the very worst kind. If the gentleman prefers to take such a place I wish to make a statement on the floor of this body. I say that we, ourselves, form the state and make it; but we have got to have the people's authority so to do. Where is the source of power from which we derive that authority? The Congress of the United States. Here is our enumerated powers (indicating a copy of the Omnibus Bill). What is the last act that we can perform? It is the casting of the vote for the ratification of this Constitution. When the last poll is closed, if a majority of those ballots are in favor of this Constitution, if it is republican in form, we are a State. But we are not a State of the Federal Union until the fact is declared by the President.

Mr. Humphrey: We practically are overstepping our powers provided by the Omnibus Bill. To illustrate it: Suppose we change the term of office of the State officers and on that ground the President should refuse to issue a proclamation. Would we still be a State?

Mr. Wood: No, Sir; for this reason, we have transgressed the powers given us. We have not performed the act we have the legal right to perform. Therefore we have destroyed all that we did. But if we do comply with the provisions of this act, then the President of this United States cannot legally refuse to declare us a State of the Union. If he lawfully refuses it it is because we have transgressed our power.

Mr. Humphrey: Would we still be a State?

Mr. Wood: Most certainly; I think that when the gentleman understands fully the legal positions he will agree with me in this. I say if we comply with the provisions of the Constitution, we go to work and comply with that act, we are a State and if the President should fail —unlawfully fail—to declare that fact, to perform his lawful duty, it would not change the facts that we have, under the law, formed and created a sovereign State simply because public officers fail to perform their duty never changes the legal rights of anybody. If it did, then legal rights can be changed with great facility.

Mr. Willis: I want to rise to suggest as a mere piece of information that the supposition which the gentleman has made everybody knows, and nobody better than he and others here, it is an utterly idle supposition.. That any man would not do his formal duty after everything has been performed on our part under the Omnibus Bill; that the President would fail to perform his part of that contract; it is an utterly idle supposition.

A Voice: Who draws that supposition?

Mr. Wood: I never had any such supposition.

Mr. Willis: No Sir; I am defending the gentleman. (Laughter)

Mr. Dickinson: I wish to call attention to this fact: The whole strength of the argument that has been made lies upon a very violent supposition and that is the supposition that the election shall be completed, the returns made, and the Constitution properly forwarded to Washington to be acted upon by the legal authority there and recommended by the President as having been promulgated in accordance with the Enabling Act. In the face of all that the President may hesitate to make his proclamation, this is something which not one delegate on this floor doubts but that within a month, after all that process shall have been gone through and we shall have been fully admitted by proclamation of the President; otherwise there is no effect whatever to the argument made with reference to the contingency that county officers may have to be elected this fall. The Constitution provides that the County Auditor shall be elected at the first general election after we become a State. But the one argument advanced that we shall become a State before the President issues his proclamation is wasted argument. The gentleman admits that we are admitted when the President issues his proclamation; I say the whole argument relies upon a violent proposition. I do not think that propo-

sition has entered into the minds of any other gentleman upon the floor unless it is the gentleman himself; it certainly did not enter into the minds of any of the members of the Committee when the report was gotten up. This Article XX therefore was passed upon that understanding that the Committee believed that it was impossible for us before admission into the Union before the election in November and that therefore the first general election under the Constitution after our admission as a State into the Union would be in 1890; that is what we contemplated and nothing else. No one had any idea that the county officers were to be elected this fall.

Then in 1890 there would be an election of all State and county officers. While I have the floor I wish to call attention to the fact—

A Voice: Did not the gentleman from Pennington who has supported this amendment used that as his strongest argument for shortening the tenure of office of the county and State officers.

Mr. Dickinson: The argument brought before this Convention was, that we were going to precipitate an election of the county officers upon the State this fall.

Mr. Neill: How does this shorten their term?

Mr. Dickinson: A year.

Mr. Wood: Where do they get the power to make the tenure of office of the Governor twenty-seven months?

Mr. Dickinson: Where do we get the power to make the tenure of office of the Governor seventeen months?

Mr. Wood: From the Omnibus Bill.

Mr. Dickinson: We get it from the Constitution, the people of South Dakota formally adopted. The Constitution of 1885 which we have no power to change, provides for two years; there's where we get our power. It seems to me a strange thing that anyone should raise the question on this floor; the Enabling Act cannot go before the time it would have life under the Constitution and before the time which the Constitution would make it legal to say, submit the question of the election of Senators to your Legislature. It cuts right to the lien at least two months until the time came when they could regularly take their places under the Constitution. There is the difficulty to be met which ever way you view the question, and the Enabling Act provides for these two months. We are to get the Legislature before the time which the Constitution has provided for. It gives a life to the government for these two months, until the time comes when the officers would

regularly take their places under the Constitution. There is that difficulty to be met. The authority of the Enabling Act is unquestioned. I can't see where the authority comes in for making the change as proposed by the gentleman and those who are with him at this time. We have endeavored as closely as possible to go by the provisions of the Enabling Act and have the officers in their places for the term for which the Constitution, made in 1885, provides, and we believe there is a great risk in making any change. I was about to say, however, no sufficient answer has been given to the question which I raised this morning. If by the framers of the Constitution of 1885 it was intended that the general elections should be on even years, why did they in that section say: "All general election shall be biennial"? The elections on even years could not be less than that. Was it not intended to apply to the elections that came on the odd years?

Mr. Wood, of Pennington: Which does the Constitution refer to?

Mr. Dickinson, of Day: It refers to both.

Mr. Wood, of Pennington: That is what I contend.

Mr. Dickinson, of Day: It also seems to me that sufficient attention has not been given to the question whether or not this amendment is not an actual amendment to the Constitution, under the guise of the Schedule and Ordinance. It is a virtual amendment to traffic in that or meddle with it or infringe upon it. Let us go within the bounds of our powers and leave that for the Legislature. I have been surprised in talking with members, in discussing here, to find the prevalence of this spirit—"We are going to have this any way, whatever the provisions of the Constitutions may be; whatever is Constitutional and legal in this matter, we ought to have an election only once in two years, and we are going to have it any way." I will not yield to anyone upon this floor in the desire that there shall be only one election each two years, but I believe this is the right and the only constitutional way, though I can make allowance for that spirit which says, "We are going to have it any way, because the people want it". What we have a right to do here is that which will be perfectly safe—that does not run the risk of leading us into litigation if we adopt it and recommend it.

Mr. Sterling, of Spink: Mr. President; the argument of the

gentleman last upon the floor is largely upon the same line as his argument upon the previous question, when the evidence of the fact is brought home to the notice of the President. The President has what? He has judicial discretion in that? Not at all. His act is in the nature of a ministerial act; he proclaims an existing fact; then we are to be deemed **ADMITTED** into the Union as a State. We are a State before. The fact exists, and the proclamation of that fact then places us into the Union on an equal footing with all the other States, and we are not into the Union on an equal footing until that proclamation is made by the President. We declare ourselves a State by our vote. There are two provisions of the Constitution that we cannot change. One is that the Governor shall hold his office for two years. That don't mean twenty-seven long months. It means two years or less; it don't mean more. Another provision is that all general elections shall be biennial—once in two years. What is the effect of these provisions? Simply this, in my judgment: A general election and an annual election are each defined by our law—the law under which we were all living and paying our allegiance when the Convention of 1885 framed this Constitution. The statute provides for two elections, and did then, to-wit: An annual election on odd-numbered years, a general election on even-numbered years. Then we have an election, and these elections occur in November—the first Tuesday after the first Monday of that month. Now, the Constitution declaring that general elections are biennial, the statute declaring that there are two kinds of elections, "annual" and "general", you will all agree with me that the statute must give way to the Constitution, if the two cannot stand together. Now, if all general elections must be biennial, and if there is an election each year, then these elections I do not contend are annual. They are all biennial hence it follows that they must be all general elections, and they are general elections, too, under the Constitution. Then, being general elections, what shape do we find ourselves in?

Section 5 of Article IX: In each organized county, at the first general election held after the admission of the State of South Dakota into the Union and every two years thereafter, there shall be elected a Clerk of the Court, Sheriff, County Auditor, Register of Deeds, Treasurer, State's Attorney, Surveyor, Coroner and Superintendent of Schools, whose terms of office respectively shall be two years, and except Clerk of the Court no person shall be eligible

for more than four years in succession to any of the above named offices.

There are all the county officers. We see by necessary construction that the November election of 1889 provided by the statutes of this Territory, is a general election, because by the time this Constitution, if ever in force, will then be in force. We will be a State by that date and that election will be a general election. Now, it may be urged that it will not be proclaimed sufficiently early for the election notices to be posted. Whoever heard of an election being invalidated for any purpose by a failure to post notices? No such doctrine was ever pronounced by any court of respectability, so far as I can learn. The failure then to post notices will not invalidate an election—will not necessarily void an election if held. Then I say you will get into a mess of difficulties that can be just as well avoided as not by keeping ourselves within the limits circumscribed and laid down before we came here. What is that? Simply this: We are electing what? We are only electing Governor, Lieutenant-Governor and other State officers—this amendment has nothing to do with the Judges. What tenure are we giving them? The Constitution provides that the tenure of the Governor shall be two years. Let's read it:

The executive power shall be vested in a Governor, who shall hold his office two years, a Lieutenant-Governor, who shall be elected at the same time and for the same term.

Does that mean twenty-seven months? We are a State if the Constitution receives a majority of all the votes cast, from and after the first of October, although that fact may not be declared for some time after—yet we cannot presume that this proclamation will be delayed for many days. It seems to me it is not a rash presumption that the fact will be declared of our admission before the twentieth day of October. The President's duty is to do it. That being his duty he will proclaim that fact of our admission as early as possible. Then if we are a State from the first day of October and that fact is proclaimed as early as the twentieth of October and we are into the Union on an equal footing with the other States on the twentieth of October, I don't see why that won't give us time to post notices. I will say this: My recollection of the statute is this that it only requires ten days before the election in each precinct to post these notices of election. If that is true then there will be no excuse why this election should not be held and all the county officers elected. Some may contend that there is nothing

in the proposition. Well I am very often in error—wide of the mark—but I am sometimes right, and in this matter I think I see my way sufficiently clear to declare without the fear of successful contradiction, that under this Constitution, it is a biennial election and therefore general. Then again—

Mr. Neill, of Grant: How does that amendment obviate it?

Mr. Wood, of Pennington: I will tell you. Fix this tenure of office so that it will expire on the first day of January, 1891. We have got to elect all the county officers; it brings everything together. In the absence of this, and under Section 20 of the Schedule, if that section is good for anything, we will have to elect county officers on even numbered years and other officers on odd-numbered years.

The supporters of the report contend that there is one way to get out of the difficulty, and that is, for the Legislature to propose an amendment to the Constitution. Now, gentlemen of the Convention, which is the best—if that is the way out of it—which I very much doubt? But suppose we could do that and get out of this scrape in that way, I submit this to you, as the representatives of a sovereign people, forming in part and submitting in whole, the organic law, is it better to make the tenure of office for the first term, which we have got the power to fix, at a little over one year, and thus obviate the difficulty and the early amending of our organic law? You amend our Constitution as early as that and people will say “We sent men down there to frame a Constitution that did not understand their duties”.

Mr. Dickinson, of Day, called to the chair.

Mr. Edgerton, of Davison: Mr. President: Do I understand the gentleman from Pennington to claim that we are to have an election on the first of November, 1889, by virtue of the Territorial law?

Mr. Wood, of Pennington: There is an election provided for, yes.

Mr. Edgerton, of Davison: I understand you to claim then that this provision in the Schedule that we will have no election after our admission until the fall of 1890, is inoperative?

Mr. Wood, of Pennington: No, I say it is legislation.

Mr. Edgerton of Davison: Why is that any more legislation than it is to provide that the term of office shall expire before the two years are out?

Mr. Wood, of Pennington: For this reason: We are not holding this election under the Constitution. We are empowered by the Omnibus Bill to provide for the election of these officers, and by necessary implication we can fix the tenure of their office, if we do not extend it beyond the limit fixed by the Constitution itself.

Mr. Edgerton, of Davison: I understand you to say that this provision in the Schedule prohibiting an election after the first of October, 1889, before the first of November, 1890, is inoperative because it is legislation? Now, I ask why is there any more legislation in that than in the provision in the same Schedule, which you propose, that their term of office shall expire for the first time, within the two years?

Mr. Wood, of Pennington: Just this: We have the power under the Omnibus Bill to provide for the election of these State officers, but we have no power to declare when and what kind of an election shall be held in the future. We are legislating now for the year 1890. We have no such power anywhere.

Mr. Edgerton, of Davison: As I understand you, we have power then to shorten their term of office under the Omnibus Bill?

Mr. Wood, of Pennington: I contend that this first term of office is in our hands, if we do not extend the tenure beyond the maximum limit fixed in the Constitution.

Mr. Edgerton, of Davison: Do I understand you to say that that provision that provides that these officers shall be superseded is synonymous with the declaration that the State shall be admitted on the proclamation of the President?

Mr. Wood, of Pennington: No, indeed, I did not say synonymous at all. I read that provision for the purpose of showing that if this election this fall is a general election—if the Constitution makes it a general election, it will be in force by that time. I read that section for the purpose of showing what became of the county officers—that they will be superseded by the State government—

Mr. Edgerton, of Davison: I understand you to say that they are necessarily superseded because the Governor and Lieutenant-Governor are elected.

Mr. Wood, of Pennington: Not at all. I am speaking of this now independently of the tenure of office—as an independent proposition.

Mr. Edgerton, of Davison: You and I do not differ upon this,

that they may hold until the first of January, 1891, unless there is a direct provision that they shall be superseded—

Mr. Wood, of Pennington: Well, I am contending that we cannot allow them to hold beyond January, 1891.

Mr. Edgerton, of Davison: I meant that unless their term is cut short expressly by the Constitution, that the admission of the State won't shorten their term of office.

Mr. Wood, of Pennington: Yes, Sir, that is the position I take.

Mr. Edgerton, of Davison: The word "supersede" here means that they may hold until their term expires unless there is an express provision.

(EDITORIAL NOTE—There is clearly an omission of some matter in the official copy at this point.—DOANE ROBINSON.)

* * * * * * * * this morning, and it is a powerful argument in the way in which it is presented. When a man expresses his strong desire as being upon the one side of the question, and makes the strongest possible argument upon directly the opposite side, it has a kind of a double-back-action force,—a great deal more force than if his desire and his argument were in the same direction; but I can give the gentleman credit for perfect candor in the argument, although he has expressed the strongest desire that these elections should come every two years and has argued strongly against the power to hold the elections every two years.

Now, Mr. President, and gentlemen, it seems to me—and I can't look at it in any other way—that there is here a great excess of caution in this matter. This fear of doing something unconstitutional; this fear of making an amendment to the Constitution. If there was any attempt of that kind—any attempt to introduce anything in the way of an amendment to the Constitution, then there might be some fears, but I say this can't be construed in any such light; that it is a provisional way of carrying this State government into effect and that it is quite customary in the adoption of new Constitutions to provide that the first term of the State officers elected under the Constitution or elected as provided for in the Constitution, shall be for a shorter term than the regular term as fixed in the Constitution.

Now then, I say with reference to this matter of safety that these gentlemen proclaim so largely, that they are willing to forego every question of what is sound policy for us to adopt in our new State; they are willing to forego every item of expense there is in

it; they are willing to forego what the people almost universally desire in regard to the time of these elections, all for the question of "safety", in which I can see nothing whatever. I say in the face of the precedents that we have in the framing of other Constitutions, in the face of the reasonableness of this thing, that this matter is provisional and we can surely provide that this election may occur in the fall of 1890.

Mr. Dickinson, of Day: Has any other Constitutional Convention ever been tied down as we are?

Mr. Sterling, of Spink: I think so. I don't see in what particular limits we are tied down, as far as that is concerned. I made allusion to the Nevada Constitution this morning. I have it here. I do not think any trouble ever arose over it from the fact that it provided that the terms of the State officers should be four years, and then provided that the term of the officers first elected under the Constitution should be two years—just half that which was prescribed as the term generally for those officers.

Mr. Hole, of Beadle: In that case, Mr. Sterling, it had not been submitted and voted on?

Mr. Sterling, of Spink: I don't think it had, but as to that, there is where the gentlemen this forenoon laid great stress, from the fact that the Constitutional Convention of 1885 elected State officers for two years, making an election come again in 1887, and I admit that were elected for that. But suppose they did? As I said this morning, there is no question as to the interpretation by them as to their power under that Constitution for an election to come at any other time, and all the circumstances under which they adopted that Constitution and that Schedule and Ordinance show that they never considered the question of their power to fix any other time. The Constitution was framed, as we all know, without any Enabling Act back of us; it was not known when we would be admitted, but it was thought we might be admitted within two years, and if we were, then we would have the officers for State government, and that is all they thought about it. There was an evident desire, so far as county officers were concerned, to provide that they should hold their offices until the next general election after the admission into the Union of the State. They wanted all parties and all factions organized to secure a large vote upon that Constitution and thereby the admission of the State into the Union. I can't see, Mr. President, any great danger in this at all. I think

gentlemen magnify the danger. This very same thing has been done before, and I say, when the gentlemen talk about what elections they had in mind when they spoke of general elections, that they had in mind the general election as it was provided and understood then, and I don't know by what fiction the gentleman from Minnehaha can say that the general election is not in the even-numbered years. It has never been heard of, that I know of, until he proclaimed it upon this floor, and I am satisfied that the members of the Constitutional Convention in 1885, had no other idea than that it was in the even-numbered years, and that they provided that the county officers should be elected at the first general election after the admission of the State into the Union. That is when they used the words "general election" or "general elections" with reference to a particular year. They said again that all general elections should be biennial, and I don't believe in that other fiction, that they used the words "general election" then with reference to annual elections.

Mr. Humphrey, of Faulk: Mr. President; just one word. First, as a question of privilege, I would like to assure the gentleman from Aurora, that it was not with the intention of asking a fictitious question that I asked the question I did, but to bring out in as bold a manner as possible the difference in the positions taken here.

Now, as to the power of this Convention to extend the term of these officers to twenty-seven months. The wording of the Committee on Schedule may have been unfortunate. Their manifest intention was to provide that he should hold his office until his successor had qualified. They had the power to do as they pleased at that Convention; we have not. It certainly would be the safe thing for us as long as it is in our power to follow in their footsteps and follow in the same line.

Mr. Wood, of Pennington: Where did this Convention get the power to make the term of office of the Governor twenty-seven months?

Mr. Humphrey, of Faulk: I don't say they had the power to do that. The other way might have been the better way to put it. Technically they might not have the power to extend their term one month, any more than to extend it one year, but the manifest purpose was simply to provide for the office not becoming vacant a month before or a month after, but simply to hold their

offices until their successors had qualified. We can be but safe in following the footsteps of our predecessors in doing what they did, when they had full power to do what they did, while we have not.

Mr. Williams, of Bon Homme: Mr. President; as this is my amendment, I would like to say a word. The argument of the gentleman from Day is such that, while my friend Mr. Sterling, I will admit, shows a spirit of great candor, and we can all certainly give him credit for it, I think he is mistaken, for he agreed with me upon this proposition for the same thing, and that is, unless we are transcending the provisions of this Constitution, that it is not a virtual amendment to the Constitution. It in no manner infringes upon one solitary section or phrase of the Constitution. The position taken by myself in framing that amendment was that this is only a provisional measure and that it in no manner governed or controlled under the Constitution, further than that the Constitution points out the officer, and that is that this Convention, by this Ordinance, follows the Constitution in the officers to be elected, but it is not bound by the provisions of the Constitution as to the terms of office, and having the power to act provisionally we have the power to fix the term of these provisional officers so that their successors will be elected under that Constitution at the time we elect the other officers. I cannot agree with the position that we must elect county officers this fall. I say we must let them hold over, but I think we have the power to elect them. It is as we please about that. Hence, the purpose of the amendment was not to permit the officers to hold over until their successors were elected, but the intent is that the new officers may take their offices at the same time that the terms of these county officers expire, and that then we will have an election and elect a full set of State officers and a Legislature. I wish now, once more, to explain that in 1890 we will have to elect a full set of county officers. The provisions of the report are that the State officers, and the legislators' terms shall expire in January, 1892. Then we are necessarily compelled to have an election for the State officers and the Legislature in January, 1891; then in January, 1892, we will be compelled to have an election for county officers again, and then in January, 1893, another election for the Legislature and the State officers; so that the bill as it comes from the Committee virtually provides and coerces the Legislature into providing for an election every year, and that is the thing the amend-

ment is intended to obviate—to provide for these provisional officers to hold their terms for only such a time that they will expire with the county officers, in 1891.

As to the amendment to the bill forcing an amendment to the Constitution, I can't see where the gentleman gets his idea.

I will say this, further, that the sentiment of the people now and the sentiment of the people in 1885, was that we have only a general election once in two years; and I say further, whatever the sentiment of the people at large, if you elect a convention of delegates, that the Convention carries with it the sentiment of the people. There can be no question of a doubt but what that sentiment was carried into the Convention and operated upon by the members of the Convention, and ought to be in this case.

Mr. Van Buskirk, of Codington: Mr. President; I wish the Convention would bear with me just one moment. I had hoped that some member of the Convention would reach one of the propositions that is troubling me. The question occurs to me, if it had not been for the provisions of the Omnibus Bill, under and by virtue of what law or authority would we have elected these State officers at all? I am a little at sea as to what we would have to do except for that bill, in the election of State officers at this time. I would ask gentlemen of the Convention to point out under what law they would hold the election for Governor, except for the provisions of this Omnibus Bill? When would you have held that election? I am unable to find out from anything that has been said here. By virtue of what authority would we have elected these officers, or at what time would we have elected them? I apprehend that Congress when it passed that act understood very well that there was a statute in this Territory that provided that we should hold our election at a given time, and when they came in and said that this Convention might provide for the election of State officers, they enacted that statute with the view that we might bridge over this period between the time we should adopt this Constitution and the time we should hold the election in the State of South Dakota. If any gentleman on this floor can point me to a statute under which we could have elected State officers this fall, I would like to have him do it. Our power to elect officers exists by virtue of the terms of that Omnibus Bill. They did not, of course, say at what particular time their term shall expire, but they knew we had a statute in this Territory by which every even year

we held general elections, and that said that these officers were going to hold over until such a time as the people of this new State of South Dakota should hold an election and elect the new State officers; and therefore they stepped in here and provided what otherwise would have been a perfect blank, and we should have had the means to elect them at all. Suppose we should not have been admitted until some time after the first of January, if you please. These gentlemen, according to the argument that has been offered here, would have been elected and held two years, and they would have been away over somewhere—depending upon the circumstance of the period when we might be admitted by proclamation of the President or act of Congress and recognized as a State. Now it seems to me that the gentlemen who drew that Bill were men who understood the history and something of the situation here. They step in here and say: "In order that they may reach that time when they hold their State elections, this Convention may provide for the election of officers until such time as the officers elected under the Constitution can qualify".

It is a good deal for the gentlemen to speculate upon what the Constitutional Convention of 1885 meant. They said, however, that the elections in this State, when it became one, should be biennial, and that all elections should be general, and they used those terms understandingly. They said that those elections should be biennial. I would give a good deal more for, and I have a great deal more confidence in undertaking to get at what they meant, by what they said, than to rely upon the speculations of what others here think they might have meant.

Mr. Dickinson, of Day: Isn't it fair to get at what they meant, by what they did?

Mr. Van Buskirk, of Codington: Well, so far as that question is concerned, I remember some years ago that a gentleman was arguing a question before the Court of Appeals as to what they meant in the Legislature in New York, and the Court said: "I don't know anything about what you meant, but I do know what you said;" and that is the condition of things that we are in here. I say we could not have any provision for the election of State officers except for the terms of this Omnibus Bill. Unquestionably they intended we should fix the terms of their offices so they should expire exactly at such a time as under the laws of this Territory we are authorized to hold a general election, and as provided by

statute. It seems to me that was the reasonable intendment of that body. That is the reason I have stood upon this question as I have. We have got no time provided for the election of these officers except by that bill, and it seems to me it is fair to presume that Congress meant we should bridge this time over until such time as our State officers could be regularly elected.

(Cries of "Question, question, question.")

The President of the Convention: The gentleman from Beadle moves the adoption of Sections 19 and 20 of the Schedule and Ordinance, and the gentleman from Bon Homme moves an amendment. As many as are of the opinion that the amendment be adopted, say aye as your name is called; those that are opposed, say no.

Mr. Sherwood, of Clark: I ask that the particular amendment be restated. Part of it has been withdrawn.

The President of the Convention: You will find it on page 3 of the proceedings of the Twenty-ninth day, except that "1894" is stricken out.

Mr. Williams, of Bon Homme: The amendment is that where the dates "1892" occur in that section, they be stricken out and the date "1891" be inserted—not affecting the term of office of the judges, as provided in the report.

The President of the Convention: If this is not the correct amendment, you had better send it up to the Clerk.

Mr. Willis, of Aurora: Mr. President; it was understood verbally that the other part of the amendment was withdrawn, and I think the gentleman has proceeded with that understanding, although perhaps the written amendment was not sent to the Clerk.

The President of the Convention: "Understandings" will not appear in the Journal. If it is different from this, you had better send it up in writing, Mr. Williams. The record here shows, as I have stated, on page 3. Now, the Clerk has this: Mr. Williams withdraws so much of his motion as refers to 1894". That is the way the record stands. Consequently it stands just as I stated before—to amend Section 19 by striking out the date "1892" where it occurs in said section and inserting in lieu thereof the date "1891".

Mr. Jolley, of Clay: If the amendment stands by striking out the word "1892" and inserting in lieu thereof the word "1891",

why, putting the whole amendment in and then following it by that entry on the part of the Clerk of that part of it which is withdrawn, it will make a very damaging and bungling record.

(Cries of "Question, question, question".)

The President of the Convention: The amendment that is before the Convention is as I have stated it. The first amendment was in yesterday's proceedings, as printed; the offer to withdraw is in today's proceedings. It stands disconnectedly.

As many as are of the opinion that the amendment be adopted say aye as their names are called; all those of a contrary opinion, no.

The roll was called (Page 148, bound Journal)

Mr. Neill, of Grant: Mr. President, I wish to explain my vote. On the last roll-call on this question I voted no, being somewhat unacquainted with the phase of the argument at that time and supposing that the whole question rested upon the provision of the Constitution of 1885, but on further study it comes to my mind that this election is governed entirely by the Omnibus Bill, and consequently I vote on this question, aye.

The President of the Convention: There are 40 ayes and 32 noes. So the amendment is adopted, and the question now recurs upon the adoption of Section 19, as amended.

Those of the opinion that Section 19 be adopted, say aye; those of the contrary opinion say no. The ayes have it.

Mr. Wood, of Pennington: Mr. President; I move you that the action of the Convention in adopting Section 19 be reconsidered, and I move to lay that motion on the table.

A Delegate: I second the motion.

The President of the Convention: It has been moved that the action of the Convention in adopting Section 19 be reconsidered and that the motion to reconsider be laid upon the table. Is the Convention ready for the question? As many as are of the opinion that the motion prevail, say aye; those opposed, no. The ayes have it and the motion prevails.

Mr. Kellam, of Brule: Mr. President; I think I was misunderstood last evening in presenting the agreement which formed a part of the report which the Committee composing the Joint Commission from South Dakota offered, and I only did that at that time, as I thought it then fully explained, to forestall the newspapers in the printing of the report. I thought it would be im-

proper to have it appear in the papers before it was formally presented to the Convention.

The Committee named by this Convention to form a part of the Joint Commission as provided by the Act of Congress under which this Convention is assembled ask leave to submit the following report:

First; the agreement that was presented last evening. That agreement is attached to this report and marked "A".

Second; the recommendation of said Committee of an Article to be incorporated into the Constitution to be submitted, respecting Territorial debts and liabilities, as provided in said Act of Congress, hereto attached, marked "B".

Your Committee also recommend the adoption as an Article of the Schedule of the Constitution, the Agreement of said Joint Commission concerning the records, books and archives of the Territory, the same to be preceded by the following words, to-wit:

"The agreement made by the Joint Commission of the Constitutional Conventions of North and South Dakota concerning the records, books and archives of the Territory of Dakota, is hereby ratified and confirmed, which is in the words and figures following, that is to say;"

Then follows the agreement, which is a part of the agreement reported. I ought perhaps to say in explanation of this report that the duty devolved upon this Commission, as the Commission interpreted it, was to deal with three different and independent items; first, the debts and liabilities of the Territory; second, the property of the Territory; third, the records and books of the Territory. As I stated to the Convention last night, upon the assembling of the Commission there soon developed a very radical difference in the views of the members of both Commissions as to the authority of the Commission in the disposition of the books and records. If the gentlemen will look at Sections 5 and 6 of the Omnibus Bill, they will see an apparent want of harmony between the two sections. One view was that the words "by the State" in Section 5 were used deliberately and with the evident meaning that the records should remain at Bismarck until after the organization of the different States and through their legislatures an arrangement was made for them. The other view was that this

disposition of the records was a part of the duty imposed upon this Commission, as recited in the next section of the Enabling Act, which says that this Commission shall also make disposition of the records and books of the Territory; and under these circumstances it was determined by a resolution adopted by the Commission early in their deliberations, that whatever agreement we did reach concerning the disposition of the books and records of the Territory, in order to bring it within the apparent terms of Section 5, should be reported to the Convention of each State, with a recommendation that that agreement be incorporated into the Schedule of the Constitutional Convention, and thus submitted, if ratified, it became the agreement of the States respectively.

I think that is all, Mr. President, that I have to say on the report. While we understood perfectly well that it was no part of the legitimate duty of this Commission to frame an article to be incorporated into the Constitution, as provided by the Enabling Act in reference to the debts and liabilities of the Territory, still, that act absolutely requiring the agreement reached to be incorporated into the Constitution, we agreed between ourselves that we would frame such an article and that it should be signed by all the members of the Commission and should be reported to each Convention, so that the article adopted by the North Dakota Convention and the article adopted by this Convention should be the same. It was thought better that they should be uniform; and so this Committee has gratuitously recommended an article, setting forth substantially this agreement, as an article which answers to the requirements of the Enabling Act. I might say further, as there may be no other opportunity, that under this agreement the Territorial library becomes, upon the taking effect of the agreement, the property of South Dakota. After the agreement was reached we caused a very accurate catalogue of all the books to be made, and this Committee has that catalogue, and, while it is no part of the duty imposed upon us, it perpaps ought to be returned to this Convention and taken care of until the books are taken possession of. I think there are about eight thousand volumes in the library.

In behalf of the Commission I will add that if in the examination of this agreement there should be anything that appears unintelligible, or anything in the agreement that gentlemen are dis-

posed to criticise, we would like to have an opportunity of explaining the circumstances under which that particular item was disposed of.

The President of the Convention: Do I understand you to move the adoption of this as a separate article of the Constitution?

Mr. Kellam, of Brule: I move the adoption of that part of the report which is marked "B" and referred to in the formal report, as a part of the Constitution, to be referred to the Committee on State Indebtedness, so that they may put it into its proper order in the article of the Constitution which they have the management of.

The President of the Convention: It is moved by the gentleman from Brule, that this be referred to the Committee on Municipal and State Indebtedness. Is the Convention ready for the question? As many as are of the opinion that the motion prevail, will say aye; those opposed, no. The ayes have it and the resolution is adopted.

Mr. Kellam, of Brule: I move that the second part of the report, which covers the agreement with reference to the books and records, be referred to the Schedule Committee.

The President of the Convention: It is moved by the gentleman from Brule that the second part of this report, that with reference to the books and records, be referred to the Committee on Schedule. Is the Convention ready for the question? All those of opinion that the motion prevail, say aye; opposed, no. The ayes have it and it is so referred.

Mr. Price, of Hyde: Mr. President, I move we adjourn.

Mr. Jolley, of Clay: Mr. President, I move we adjourn until nine o'clock tomorrow morning.

A Delegate: I second the motion.

Mr. Brott, of Brown: Mr. President, I have received a call from home that requires my presence there tomorrow, and as our duties are nearly over, I would ask to be excused from further attendance here, and I would ask that Mr. Stoddard be allowed to sign my name to the Constitution.

The President of the Convention: The gentleman from Brown asks that he be excused from further attendance upon the Convention and that Mr. Stoddard be allowed to sign his name to the

Constitution. If there is no objection, it is so ordered. There being no objection, it is so ordered.

It has been moved that the Convention now adjourn until nine o'clock tomorrow morning. As many as are of the opinion that the motion prevail, say aye; those opposed no. The ayes have it and the Convention stands adjourned.

THIRTY-FIRST DAY.

August 3d, 1889.

Convention called to order at nine o'clock A. M., by the President.

Prayer was offered by the Chaplain.

The President of the Convention: Reading of the Journal of yesterday.

The Clerk proceeded to read the Journal.

Mr. Sterling, of Spink: Mr. President, I move that the further reading of the Journal be dispensed with.

The President of the Convention: If there is no objection, it will be so ordered.

Mr. Hole, of Beadle: Mr. President, we wish to report back the part of the report made by the Commission sent to North Dakota which was referred to us on yesterday, and in reporting this back I would move the suspension of the rule that requires it to be laid over for one day, and move, further, the adoption of this report, Section 23 of our Schedule.

The President of the Convention: The Secretary will read the Section 23.

The Secretary read the report of the Schedule Committee.

Mr. Hole, of Beadle: Mr. President; as I understand it, we have no power whatever to change this in any particular whatever, and I move that the rules be suspended and the report of the Committee on Schedule be adopted.

A Delegate: I second it.

Mr. Humphrey, of Faulk: Mr. President, in view of the fact that it is not within our power to reject this part of the agreement, I am in favor of the adoption of the language of the Omnibus Bill, and I would move you to amend the report by using the word "incorporating" instead of "adopting".

The President of the Convention: As many as are of the opinion that the rules be suspended, say aye; those opposed, no. The ayes have it and the rules are suspended. The question now recurs upon the amendment of the gentleman from Faulk.

Mr. Price of Hyde: Mr. President; I desire to state, if I understand the report which has just been read, it refers to the books, records and archives of the Territory. I understand the gentleman from Faulk to say that it is obligatory upon this Convention to adopt this; that it has no power to change it. I don't know that that is true. The Commission have recommended that a certain article be adopted and incorporated in the Constitution. That, I understand, is what has been read. Of course they can change it if they want to. There is no necessity of it.

Mr. Humphrey, of Faulk: Mr. President; as I understand it, property is assets, and I can't conceive that there is any power in the Convention to go behind the report of this Committee. I understand that I am in favor of its incorporation, but I am only in favor of using the word "incorporating" instead of adopting."

The President of the Convention: The question is upon the amendment. As many as are in favor of the adoption of the amendment, say aye; those opposed, no. The Chair is in doubt. Those in favor of the amendment, rise and stand and be counted. Those of the contrary opinion, rise and stand and be counted. The amendment is lost. The question recurs upon the adoption of the report of the Committee. As many as are in favor of the adoption of the report, will say aye; those opposed, no. The ayes have it and the report is adopted.

Mr. Hole, of Beadle: Mr. President; I would move you that this report, as now submitted and adopted section by section, be adopted as a whole.

A Delegate: I second the motion.

Mr. Price, of Hyde: Mr. President, do I understand that the article reported by the Commission has been adopted—

The President of the Convention: The Chairman of the Committee on Schedule now moves that the report of the Committee on Schedule, as it has been reported and adopted section by section by the Convention, now be adopted as a whole. Are you ready for the question?

Mr. Hole, of Beadle: Mr. President; in Section 7 there was a provision adopting the former Constitution, so far as election

purposes is concerned, as a part of the Schedule, and making that the rule. Now, by the amendment of last night it is made contradictory, and I would make a motion to reconsider Section 7, with the purpose of striking it out.

The President of the Convention: It is moved that the adoption of Section 7 be reconsidered.

Mr. Hole, of Beadle: If there is any objection, I will let it stand as it is, and ask for the adoption of the report of the Committee on Schedule, as a whole.

A Delegate: Well, what's the use of—

Mr. Hole, of Beadle: I will withdraw it.

The President of the Convention: The question is upon the adoption of the report of the Committee on Schedule, as a whole. Is the Convention ready for the question? As many as are of the opinion that the report be adopted say aye; opposed no. The motion is carried and the report of the Committee on Schedule is carried and the report of the Committee on Schedule is hereby adopted as a whole.

Mr. Sherwood, of Clark: Mr. President, I send up the report of the Committee on State, County and Municipal Indebtedness and move that the report be adopted.

A Delegate: I second the motion.

A Voice: Well, I'd like to hear the report read.

The report of the Committee was read by the Clerk.

Mr. Williams (of Bon Homme) called to the chair by the President.

Mr. Edgerton, of Davison: I would like to ask the judgment of the gentleman as to what the debt would amount to provided the Legislature issued bonds to the amount contemplated by this section.

Mr. Sherwood: It would be impossible to say what the exact debt would be. We have the figures to submit at \$740,700.00 and \$6,500.00 in addition to that. We desire to say further that there are two or three items that are very uncertain, such as running the State from now on which can not be exactly fixed upon.

Mr. Edgerton of Davison: It is with some reluctance that I am constrained to oppose the report of the Committee. Mr. President, I do not think at this time in the history of this commonwealth we are prepared to give the Legislature the power to run us in debt \$500,000 more than \$750,000 we are compelled to as-

sume under the Omnibus Bill by the report of the Committee. I know gentlemen may tell me that it is only a power that will not be exercised. I think the experience of every man in this Convention will bear me out that the Legislature in all human probability will run us in debt to the limit allowed by the Constitution. In other words that the State of South Dakota will be in debt the \$750,000 that we are compelled to assume under the Omnibus Bill and also \$500,000 that we are allowed by the report. I want to call the attention of the Convention to certain provisions in our Constitution in reference to the indebtedness referred to. Article XI, Revenue and Finance, Section 1: "The Legislature shall provide for an annual tax sufficient to defray the estimated ordinary expenses for each year; not to exceed at any one year two mills on the dollar of the assessed valuation of all taxable property in the State, to be ascertained by the last assessment made for State and county purposes. And whenever it shall appear that such ordinary expenses shall exceed the income of the State of such year, the Legislature shall provide for levying a tax for the ensuing year sufficient with other resources of income to pay the deficiency of the preceding year, together with the estimated expenses of such ensuing year." It is the following part of the section particularly I invite the attention of the Convention to. "And for the purpose of paying the public debt the legislature shall provide for levying a tax annually, sufficient to pay the annual interest and the principal of such debt within ten years from the final passage of the law creating the debt, provided that the annual tax for the payment of the interest and principal of the public debt shall not exceed in any one year two mills on each dollar of the assessed valuation of all taxable property in the State as ascertained by the last assessment made for State and county purposes." That is, in other words, we now propose to put it in the power of the Legislature to increase the debt over \$750,000, \$500,000 which will make the total debt \$1,250,000. One-tenth of that amount is to be paid annually; that is in addition to the two mill tax that we pay for the ordinary expenses of the government we must pay an additional two mill tax or sufficient thereof to meet the interest and one-tenth of the principal. In other words that we must pay \$125,000 of the principal together with the interest annually. If any gentleman upon this floor can see the immediate necessity of granting this power to

the Legislature I would like to hear about it. In the first place you may say it is necessary for the erection of a public building. No man will claim that there is any necessity for any expensive public buildings for the next three years. However, in all human probability the capitol will not be permanently located for the next three years. I shall be the last one to oppose any reasonable appropriation to build a suitable and proper capitol building at the seat of government wherever the people of South Dakota may locate it. But at present I do not see the necessity for this extraordinary power. In the next place our Constitution is so easily amended ineffect, I am of the opinion it is one of the defects of that Constitution that it may be so easily amended. It is only necessary when an extraordinary expense is to be rendered to submit the proposition to the people that the people may ratify it. If this limitation is placed at \$850,000, that is \$100,000 over and above the \$750,000 that we are compelled to pay by the Omnibus Bill by the report of the Committee. If we need more than the \$100,000 submit the proposition to the people and let the people determine whether we need the additional amount to the amount of \$100,000 or \$200,000 or \$300,000 over and above that amount.

The State starts in with an extraordinary debt for a new State; starts in with a fixed debt that it is impossible for us to evade, of \$750,000. Now we are asked to give the Legislature the extraordinary power that exists in but few of the States, that of running the State in debt for another \$500,000 over and above the \$750,000. I think I state it advisedly when I say this is an extraordinary power. There are but few states that give the power to the Legislature to do as recommended. I think many of the States limited it to \$50,000 or \$100,000 and went into the sisterhood practically out of debt. Now, by this report we are called upon to ratify an indebtedness of \$750,000 back of us and fix a debt accumulating. Let me take this opportunity to say that the Committee who went to North Dakota secured for us a report of settlement that is not only just but eminently fair and very satisfactory. I say, while I assume that that is fixed by the report of the Committee and the Omnibus Bill, let us go cautiously when we attempt to saddle upon the people a debt, unless it seems absolutely necessary, without first submitting it to vote of the people. My own opinion is that \$100,000 is amply sufficient to meet all the pressing wants that we may be called upon to meet for the next three years until the

permanent capital shall be fixed; unless we submit the proposition first to the people.

For this annual revenue you may count upon two mills tax which is estimated here to be about \$248,000 per annum. That may be disbursed because being an annual revenue will require no extraordinary powers. We have heard the statement advanced, this is based upon the history of the past largely; that is estimating the assessed valuation of Dakota to be \$100,000,000. That two mill tax that is allowed for the ordinary expenses of the government there would be a revenue of \$200,000., from the railroads \$33,000., and from other sources \$15,000, making an annual revenue of the State, as near as we can approximate it, \$248,000. That is not within the limitations of the Constitution because that is the ordinary annual revenue of the State government that can be disbursed by the Legislature. The expenditures, so far as I have been able to ascertain them, I will say this is a table that was prepared with some care by Mr. Ward, a citizen of this city, formerly auditor of this State, for the maintenance of State institutions, \$223,905. and for standing appropriations necessary to run that State government, \$100,000. He estimates the expenses of the first State Legislature at \$90,000; total expenses, \$448,905; consequently it will be seen by any person that the necessary and absolute expenses of the government for the next two or three years will be very large unless this is anticipated, should we give the Legislature power to borrow money for the annual expenses of the government. This is an extraordinary power granted to them under the report of the Committee. It is unnecessary and if you do that, unless it changes the provisions requiring one-tenth of the principal to be paid annually, this certainly is unnecessary. Taking either view of it in my opinion at this time it is uncalled for. If we are called upon at any time to meet extraordinary expenses, let us submit the proposition to the people and if they believe that such extraordinary expenses are warranted, the people of South Dakota will immediately grant the power; if they believe it is unwarranted then of course there is no necessity for having this in the Constitution. Therefore, for these reasons, I am compelled to vote against the adoption of the report of the Committee. I do it, as I said in the first instance, with great reluctance.

Mr. Boucher: Do you believe that this Convention has the

right to raise revenue on the State indebtedness at all except so far as it is held by the Omnibus Bill?

Mr. Edgerton of Davison: I think, to state it accurately, we are acting under the Omnibus Bill. That is a limitation of our powers. The Omnibus Bill provides absolutely that we must assume our proportion of the Territorial debt and that proportion as adjusted by the Joint Commission. It says still further than that that we shall have the power to make all necessary amendments of the Constitution of 1885 to carry out the express provisions of the Omnibus Bill and the Omnibus Bill provides that we must assume \$750,000 of the Territorial debt. The Omnibus bill provides that we shall make our amendments to the Constitution of 1885, that shall be necessary to give full force and effect to this obligation on our part. Consequently my own opinion is, that the power being granted to this Convention by the Omnibus Bill we have the right to so adjust the Constitution of 1885 that we provide for the payment of the \$750,000. I do not believe that that means in addition to the original limitation of \$500,000. I believe in a fair construction of the Omnibus Bill. The Constitution provides that we must so increase the limitation as shall absolutely compel the State to pay \$750,000. I know some gentlemen upon this floor believe that our power is to so increase the limitation that the Legislature shall have the power to fix the debt as these gentlemen of the Joint Commission have reported. My own opinion is that we have the right to make the limitation that the Committee have reported. I do not believe that we have the right to exceed the powers of the Omnibus Bill in this Constitution. I believe that they have the report to this Constitution that we must assume \$750,000 and also leave the limitation at \$500,000 as they find it in the Constitution. I believe the Committee have exceeded the powers of this Convention, that is simply a question of business for the future State. Shall we adopt the report of the Committee that will fix the liability of the State at \$750,000 under the Omnibus Bill and leave the original amount \$500,000 as in the Constitution of 1885?

Have we the further power of only increasing the limitation to \$750,000 and leave the power in the Legislature to create any bonded indebtedness whatever without first submitting the proposition to the people? A number of states have that absolute limitation, notably Michigan, that no Legislature can make any

debt without first submitting the proposition to the people; I think it is Michigan, I would not be certain. As I said before, in my opinion there is an intermediate force, that is that we pay this debt that we are compelled to pay under the Omnibus Bill, of \$750,000, and also in addition to that that the Legislature shall have the power over and above the current revenues of the State from year to year, to run us in debt a bonded indebtedness of \$100,000. In other words, it amounts to this proposition: Increase the \$500,000 to \$850,000. As I said before, I believe that the Committee have gone beyond the power given them by the Constitution and by the Omnibus Bill; gone—

Mr. Williamson: I wish to offer the following amendment. I wish to amend the report of the Committee by striking out in Section 2 the figures \$500,000 and inserting in lieu thereof \$850,000, and by striking out the Section 3 entirely of the report of the Committee.

Mr. Lee: I believe, Sir, in letting the majority rule. That is one of the principles I have fixed, heart principles. Consequently I did not see fit to bring in a minority report. But myself and one other member of the Committee voted \$300,000 when they had the report under consideration. I believe in economy, hence I heartily support the motion of my friend on the right. \$500,000 is too large.

Mr. Sherwood: Perhaps it would be proper to tell the reason why the Committee came to the conclusion to which the finally came in regard to this matter. Before we go any further into the details in this discussion I desire to say that the view of the Committee in this matter was this: We held to this position, that the intention of the Constitutional Convention of 1885 was the creating of an indebtedness of \$500,000 and that the intention of the Convention was to ask Congress to enact a law that we should assume and pay a certain proportion of the debt of the Territory of Dakota, as shall be provided. Then our idea is that we are to follow but the law of Congress by assuming whatever debt this Joint Commission settle upon us, yet we are not compelled to amend the Constitution of 1885 by changing the \$500,000 to any greater or less sum in order to conform with the provisions of the Omnibus Bill and assume this debt. That we assume the debt that this Joint Commission has found to be our proportion of the debt of the Territory of Dakota, then we stand in this position that we do

not find it necessary to amend the Constitution of 1885 at all, neither do we find any warrant to amend the Constitution by changing the limit of \$500,000. That was the view of the Committee; none of the Committee considered that we had any right to change Section 2. The Omnibus Bill provided for incurring that portion of the debt of the Territory of Dakota provided for in the Omnibus Bill, to-wit: \$750,000, a certain sum, and having provided for all that we do not see it is abusing the power to change the limit of \$500,000 fixed under the Constitution. I think the question of power will come in here properly and after a careful examination of the subject the Convention shall decide that it was the intention of the Constitutional Convention of 1885 to fix the limited indebtedness at \$500,000, then we are bound by that limited indebtedness and cannot do more or less than accept the indebtedness fixed by the Joint Commission.

In relation to the amendment of the gentleman from Moody.

Mr. Williams: If the gentleman will allow me I will offer another amendment in lieu of the last one made by myself. To insert the figures \$100,000 in lieu of the figures \$500,000 in Section 2. That will be the only change which I wish to offer.

Mr. Wood, of Pennington: I second the amendment.

The Chairman: The question before the Convention is upon the adoption of the report of the gentleman from Clay; to that the gentleman from Moody moves an amendment to insert the figures 100,000 instead of \$500,000 in Section 2.

Mr. Sherwood: I desire to state one or two things; we cannot possibly be admitted into the Union before about the first of November next. As I understand it the Territorial tax is levied, will be levied prior to that time; the tax of the State of South Dakota will have to rely upon a levy prior to the time we become a State; if the gentleman from Davison is correct. He estimates the running expenses of this State to be \$448,905., including the support of the public institutions and our Legislature, etc.

Mr. Edgerton of Davison: It includes all deficits, the interest on the bonded indebtedness, maintainance of the state institutions, the standing appropriation for the expense of running the State government; the expenses of the Legislature; the whole will amount to \$448,900.

Mr. Sherwood: I understand also there are some gentlemen who have figured that the revenue will amount to about \$238,000

Mr. Edgerton, of Davison: In Section 11, the Legislature has power to levy an additional tax of two mills.

Mr. Sherwood: Those extra two mills would not be levied until we become a State and levy a tax regularly as a State. May I ask you this question? The two mills,—assuming we are limited to two mills,—the present levy will be made in view of the law in existence. If that be a fact there will be a deficit of over \$100,000. As I understand it, if there were a three mill tax levied there would be still a deficit in the running expenses of the State of over \$100,000.

Mr. Edgerton, of Davison: The limitation in Article XI for our expenses of State government an additional two mills may be levied for payment of interest upon the indebtedness, which would really make four mills.

Mr. Sherwood: I am now speaking of our revenue received as a Territory and speaking regarding this revenue, and I say, that a three mill tax levied on the estimate of the gentleman from Davison that there would still be a deficit. I desire the Convention to think of this matter carefully; I desire to say also, I am very much opposed to making this \$500,000 myself. I would have preferred to make it \$100,000 of \$150,000 after carefully examining the amount of expenses that might accrue to the new State; we must have some credit and some latitude to borrow money. I deem this provision of this Constitution a wise one. I desire to say that while there are many States who have a limit from \$50,000 to \$300,000, there are other states which have a limit of \$500,000 or more; I think Kansas has a limit of \$1,000,000.

Mr. Edgerton, of Davison: What limit has Iowa?

Mr. Sherwood: I think it is \$100,000. I may be mistaken, I think it is \$100,000; Minnesota, I think, has \$250,000.

Mr. Van Buskirk: I desire to offer an amendment like this: That the public debt of this State, to be hereafter incurred shall never exceed the sum of \$500,000. and until the present debt of South Dakota, assumed upon the division between North and South Dakota shall have been paid, South Dakota shall not incur further indebtedness exceeding the sum of \$200,000.

Which amendment received a second.

The Chairman: The motion before the Convention is, the adoption of the report of the Committee on State, Municipal, and County Indebtedness. The gentleman from Moody county offers

an amendment and the gentleman from Codington County offers an amendment to the amendment.

Mr. Jolley: I rise to a point of order; an amendment to an amendment, I do not understand what that means; the amendment is to strike out and insert. Now, if the amendment is to strike out \$500,000 and insert \$100,000 this other amendment is not taken in the place of anything, does not add to anything. It is vague.

Mr. Van Buskirk: I will move this as a substitute for the amendment of the gentleman from Moody county.

Mr. Caldwell: Of course it is evident that the limitation regarding this State indebtedness must be either one of two things; it must mean that the \$500,000 limitation is to include the Territorial indebtedness assumed or it must mean that it is independent of that debt. It seems to me that if it is to be regarded as including that part of the Territorial indebtedness which is to be assumed that it is competent for this Convention, under the limitations which have been placed upon it to increase it to no further sum than simply enough to cover precisely the total amount of the indebtedness assumed. That is to say that if this limitation upon the State indebtedness is to include the Territorial debt that we have the power under the Omnibus Bill and the requirement which is upon us to make our Constitution conform to this limitation that we simply have the power to increase that sum to \$500,000.00, which is just enough, and precisely enough, to cover the debt which we assume. On the other hand if the interpretation is to be that the Territorial debt assumed is independent of and outside of this limitation upon the debt which the State may incur, then we have not a particle of power to change that one nickle because this fact being independent it is not affected a particle by any of the requirement or limitations of the Omnibus Bill. It is my judgment that this limitation upon the power of simply the State indebtedness is totally independent of the requirement requiring the assumption of the Territorial debt. I am lead to this conclusion by the existence of Section 5 of Article XIII.

Mr. Jolley: That is stricken out.

Mr. Caldwell: I am speaking now, of course, of our power under the Omnibus Bill as merely to change the Constitution of 1885. In the Constitution of 1885 appears this Section Five of Article XIII which says "Consent is given that Congress may make such

provision or the payment by this State of the existing indebtedness of the Territory of Dakota as it shall deem just and equitable and this State shall assume and pay so much thereof as this Congress may provide." Now Congress has provided by this Omnibus Bill a method by which a just division to South Dakota of the Territorial debt shall be adjusted; how shall it be assumed; and the steps in execution of this requirement of the Omnibus Bill have been taken. But it is determined that the amount thereof is very much higher than the limitation upon the State; the very fact of the liability, that the debt would thus be larger seems to me to raise the fair presumption that the amount of the Territorial debt was to be regarded as totally outside of the limitation upon the State debt. Now as I say, and the reason why I think that this interpretation, independent of these two propositions may be fairly maintained, is this; that such construction must be put upon the statutes and upon the Constitution as will give effect to the limitations contained therein. If such construction be now put upon this provision of the Constitution of 1885 as shall require that the \$550,000 is to include the Territorial indebtedness, of course the whole thing falls to the ground, and the Constitution by its own provision conflicts with itself. So that, as I say, we must give such interpretation, if it be possible as shall not result in a conflict between the different parts of the same document. Therefore the only interpretation which can be put upon this article in order to avoid this future conflict is to require the two limitations to the two requirements as totally independent of each other; for if it be agreed, or if it may be fairly implied that these two propositions are independent of each other, it must necessarily follow that there is nothing whatever in the Omnibus Bill that has any reference whatever to this limitation of \$500,000; the only thing that there is in the Omnibus Bill in the nature of a requirement is concerning the assumption by this state of its portion of the Territorial debt. There is not in the Omnibus Bill a single line or a single word referring to the amount of independent debt which the State itself may create. Therefore, if it is true that this limitation of \$500,000 is independent of the requirement concerning the assumption of the Territorial debt it is absolutely beyond the power of this Convention to change that sum of \$500,000 one iota, however desirable it might be that there should be a less sum fixed than has already

been fixed. The limitation upon this Convention is, that it shall make such changes in the Constitution of 1885 and only such changes as are to be inferred from the requirements of the Omnibus Bill. Therefore, I shall certainly be opposed to either of these amendments. It seems to me the only possible thing that can be done with reference to the Constitution of 1885 with regard to the amount of public indebtedness is simply to make it beyond peradventure that these two propositions are independent. It seems to me the only thing that this Convention can do is to put in here somewhere a provision that the limitation to \$500,000 is not to be regarded as including the sum which the State must assume in furtherance of the requirements of the Omnibus Bill in taking its share of the Territorial indebtedness.

Mr. Jolley: Why not put an independent section in?

Mr. Caldwell: It absolutely, in my judgment, forbids this Convention from changing a single figure of that \$500,000.

Mr. Boucher, of McPherson: Mr. President; upon reading Section 2 of Article XIII of the Constitution of 1885, I think it is perfectly clear that that \$500,000.00 indebtedness is entirely separate and distinct from the indebtedness which the State would inherit from the Territory. That section is this:

"For the purpose of defraying extraordinary expenses and making public improvements, or to meet casual deficits or failure in revenue, the State may contract debts never to exceed with previous debts in the aggregate \$500,000." so I don't believe there is any question but what those are separate and distinct. It is not a state debt. They assume the payment of the Territorial debt. Now, I am anxious and willing and will be glad to vote for the amendment. I rather like the amendment suggested by the gentleman from Codington county, if I can become satisfied that we have got the right to do it. The question in my mind is whether we have any right to change or limit the State indebtedness for the purposes specified in Section 2 of Article XIII, from \$500,000.

Mr. Williamson, of Moody: Mr. President; with reference to this question of previous indebtedness which has been mentioned by the last gentleman upon this floor, it was my opinion before this question was discussed here, that we had no power in the Convention to do anything more than to raise the limit of \$500,000 to such sum as would bear its proportion of the Territorial indebtedness, but as a number of the legal gentlemen, members of this

Convention, seem to be of the opinion that this Convention has power under the Omnibus Bill to change that—to assume that indebtedness and change the \$500,000, either by omitting it altogether, or by leaving it stand altogether, or by multiplying it, I accede to their opinion on that point. It then, as it seems to me, becomes simply a question or policy for this Convention to determine what changes they shall make in this matter. Now, this Convention is obliged to amend Article XIII to provide for this Territorial indebtedness which we have inherited, because the report of the Committee clearly changes and amends the meaning of Article XIII, because they have inserted Section 3, which states specifically that the indebtedness we assume from the Territory of Dakota shall not be included in the indebtedness referred to in Section 2. It certainly appears that their report provides for the material amendment of Article XIII, and that such an amendment, or some amendment of Article XIII is required, in order to bring us within the requirements of the Omnibus Bill and the Constitution.

With reference to this Section 5 of the Constitution as originally adopted, it has been dropped by the report at this time because it is wholly superfluous at this time. It was adopted at that time as a temporary expedient. No machinery had been provided at that time for determining what our share of the Territorial indebtedness would be. This Section 5 is very much like the Schedule and Ordinance in its effect. It was a temporary bridge, or expedient, to go over with at that time.

So far as saying we must now construe Section 5 and Section 2 together, it seems to me that is a little absurd. As I am informed and believe, the amount of Territorial indebtedness which would have been South Dakota's share at that time, was about four hundred thousand dollars; that is, that South Dakota would at that time have been obliged to incur an indebtedness of four hundred thousand dollars, and it appears to me plain, from that fact, that it was the intention of the framers of that Constitution to leave leeway of about one hundred thousand dollars, under this Section, for the State to go on and meet extraordinary expenses that might turn up, and it seems to me we ought to take that as a guide at this time. I would like to call attention to the wording of Section 2. It says:

"For the purpose of defraying extraordinary expenses and making public improvements, or to meet casual deficits or failure in

revenue, the State may contract debts never to exceed, with previous debts, in the aggregate, \$500,000".

Suppose we leave out these words "with previous debts", then it would have read, "the State may contract debts, never to exceed \$500,000". We have therefore a most complete cut-off of all the indebtedness by the State. It appears to me plain that it was the intention of the Constitution when this Section was drawn, that that was to cover the indebtedness inherited from the Territory as well as that incurred by the State. Otherwise that Convention was guilty of tautology when they put in these words that amount to nothing, "with previous debts".

Now, inasmuch as this has become a question of policy, I think this Convention may well consider what the people of South Dakota, when they voted upon the adoption of this Constitution, believed that meant. I am not afraid to say that I am anxious in my action here to conform, so far as these Constitutional provisions and the Enabling Act will permit, and to so act and vote as I believe the majority of my constituents would wish to have me vote and act, and I know that my own county—Moody county, which had the honor of casting the largest vote, proportionately, in the Territory, for the Constitution—1059 votes for and two votes against this Constitution last fall—I say that I know that my constituents of Moody county did that more for the purpose of cutting off the chance of further indebtedness than for any other reason. It was because they viewed with dismay the mountain of indebtedness the Territory has been piling up, and it was because they wished to interpose a barrier between the people and further indebtedness, that they voted for the adoption of this Constitution. The people of my county do not believe that public prosperity is promoted by incurring public debts, or that the way to gain prosperity is to go in debt beyond your income and beyond your ability to pay. The board of Commissioners at the last session paid off the last outstanding bond of Moody county. For over ten years there has never been a warrant in that county which has not been paid upon presentation. They have no debts. They have a county jail and a court house. But the people of that county owe, as its share of the Territorial indebtedness, the sum of fifteen thousand dollars, and the people of that county don't want the State to have the opportunity of piling ten thousand dollars more indebtedness upon that county. They don't want any more indebtedness.

They served notice on me when I was elected that they didn't wish this Convention to make any alterations in the Constitution, except such as are provided by the Enabling Act, and specifically referred to this matter of indebtedness; so I have had official notice served on me in that respect. Now, as the gentleman from Davison county has well said, where you grant the opportunity to incur indebtedness to the State, the indebtedness will be almost certain to follow. In entering upon statehood we are obliged to curtail our expensive habits. There is no question about it. We cannot as a State go on in the lavish way in which the affairs of the Territory have been conducted. Our income has been cut down, and for years we will have to live upon a more economical basis than we have been doing. It is hard to abandon an extravagant mode of living and come down to the requirements, but it is absolutely necessary to do it. We are confronted with a reduced income, and if the opportunity is open before us, upon entering upon statehood, to continue for a time lavish expenditures, by incurring further indebtedness, I tell you, gentlemen, we will incur that indebtedness. The members of the Legislature cannot and will not have the power to stand up against the pressure which will be brought to bear upon them. This thing will be "absolutely necessary" and that thing will be "absolutely necessary", according to the advocates of certain measures. The pressure will be so great that such indebtedness will certainly be incurred. How are we going to meet this extraordinary addition to our expenditures? When an individual has a certain and fixed income, and is in debt to a certain sum, and he finds this income is not sufficient to enable him to live in the manner in which he is accustomed to live, and to pay interest upon his debts, is it a matter of good judgment for that individual to borrow more money to enable him to continue living in the manner in which he has been living, or, to enable him perchance to build an addition to his house? Is that a matter of good policy for an individual? And isn't the same principle which would apply to the individual to apply to us as a State? It seems to me, in entering upon statehood, that if there is any virtue in the Constitution it is in its power to limit the Legislature. The most important clauses in this Constitution are those limiting clauses and I certainly think if we have the power to make such an amendment, it is good policy to adopt such an amendment as that proposed here.

Mr. Davies, of Edmunds: Mr. Chairman; we have facing us two propositions, and we can't avoid considering the two; - the Omnibus Bill and this \$500,000 limitation. And I think I see the way out of this through a modification of the amendment made by the gentleman from Codington. It is no time in our proceedings to offer an amendment or a substitute, or I would offer it, so I will talk on the amendment. We must meet the requirements of the Omnibus Bill and assume our proportion of the Territorial indebtedness. That is a fixed fact; no one of us wishes to dodge that issue. Again, we have right here a Constitution which, as the gentleman says, we have inherited as a State. We are also doomed to inherit this Section 2 of Article XIII unless we assume we have the authority here to amend this Constitution. Now, then, how will we get out of this predicament, I say we will get out of it on the same principle that we have been getting out of these other predicaments. What is that? Do as little as we can do in the way of modifications to get out of this predicament, and no more. Now, I think there is \$200,000 that the last amendment covered. I should rather have it \$100,000, but my idea is this: Can't this be so modified that the sum \$500,000 will remain as it is in the Constitution, but instead of saying \$200,000, make it \$100,000 of \$200,000, but in such a way that the limit of \$500,000 will always stand. To illustrate, the amendment now says \$200,000; we have \$750,000 indebtedness; that makes \$950,000. After we pay \$900,000 of this debt, how much can we assume? Just \$200,000. We will still have \$50,000. My idea is this; to so modify it that after we pay - say we pay \$600,000 out of this \$950,000, we have a debt of \$350,000 left, but still, let us make this amendment so self-acting that at that time we can go into debt \$150,000 more, or, make it \$500,000. The most we can raise by debt is \$100,000 until such a time that the balance of the debt unpaid and the amount assumed will not exceed \$500,000. I think the gentleman from Davison, our honorable President, intended that that \$100,000 should be the limit beyond which we could not go until the time when that and the balance unpaid should not exceed \$500,000. I would like to ask the gentleman from Codington this question; whether you could not so modify your amendment that after we pay so much of the Territorial indebtedness - suppose we pay so as to reduce it to \$350,000; then we could assume \$150,000, so as to come up to this \$500,000.

limit; so that at any time in the future we can go from \$100,000 to such a—

Mr. Van Buskirk, of Codington: There is no difficulty in getting that into shape, so it can be done. I drew this somewhat hurriedly.

Mr. Davies, of Edmunds: I would like you would draw this amendment.

Mr. Price, of Hyde: Mr. President; I have never been accused of being a very able financier, except perhaps in disbursing of the funds which came into my hands, but I want to say to this Convention that I am in favor "of the old flag and an appropriation", and am therefore in favor of adopting the report of the Committee. There would be a great deal of force in the argument of the gentleman from Moody if we were assembled here for the express purpose of framing a Constitution for Moody county, but we are here acting for the proposed new State, and the gentleman must remember that Moody county forms but a small portion of that State, and he himself is a very small portion of that county! Now then, I apprehend from what has been said in opposition to this Article as presented by the Committee, that gentlemen are ready to vote for it, could they convince themselves that we had a right to do it. In other words, they seem to think that it would be an infringement upon the provisions of the Omnibus Bill, and then some of them go so far as to state that it would be in direct opposition to the Constitution as adopted by the Convention of 1885. Now, gentlemen, I have great respect for the Constitution which was adopted in 1885. I have supreme respect for the Omnibus Bill. Why? Because it was passed by an American Congress, which will go into history as admitting three imperial Territories as four States, into the American Union, and it was done by a DEMOCRATIC Congress, and I am somewhat in sympathy, probably, with the Democratic party! But I don't believe that this Omnibus Bill is such a sacred document as men would have you believe. I take the same position that I did upon the assembling of this Convention, that we could entirely ignore the Constitution of 1885, and if it were ratified by the people and the proclamation issued by the President, it would have been the Constitution of the new State of South Dakota, and I apprehend that gentlemen upon the other side will not say that the President of the United States, whom they have passed resolutions endorsing for his friendship to Dakota, would go back

upon the expressed will of the people of the Territory of Dakota, as decided at the ballot-box. He could not, gentlemen; he is such an everlasting friend of this Territory!

It is urged that this amendment ought to prevail because it would be in the interest of economy. I think there is one matter which has been lost sight of by the members of this Convention. Now, then, if we increase this debt, or if we limit it to \$500,000 regardless of the nearly \$800,000 of a debt which is now hanging over us, it is necessitated that this \$500,000 will be squandered; that it is unsafe to trust a representative body of men coming direct from the people, and that they will necessarily squander this \$500,000! Why, gentlemen of the Convention, one party in this Territory has had control of it ever since its very existence and is there anything upon the statute books or the appropriation ledgers to show that they have ever abused the authority? When my Republican friends vote against this proposition, they have got to say that they cannot trust a Republican Legislature, for we ought to see that a Republican Legislature will be elected. I have more confidence in your party, gentlemen, than you have yourselves; I am willing to trust this parts—the representatives coming direct from the common people of the land, and I believe they will not squander money entrusted to their care. It is not absolutely necessary that \$500,000 in bonds should be voted by the Legislature, if that money is not necessary to carry on the State, and I don't believe they will do it.

Again, gentlemen, do you know what the actual running expenses of the new State will be? None of us know that, nor can we make a close estimate of it. It has been estimated and stated by gentlemen who have been upon the floor that about \$50,000 would be derived from taxation and other sources, but it must be remembered that that is upon a basis of a two-mills taxation. Do you want to go on record as saddling the full limit of that taxation on a people who are living on wind and water in the summer and snow-balls and icicles made into soup, in the winter? Our crops are poor, our people are paupers, and we are willing to let somebody in the future help pay this two-mill tax, if bonds are necessary and can be raised at four or five per cent.

Mr. Hole of Beadle: I want to ask some business questions, as a business proposition. We will have to take care of the

\$750,000. I would like to ask this Committee, when does the \$750,000 fall due?

Mr. Sherwood, of Clark: I am unable to answer the question.

Mr. Kellam, of Brule: I don't think any gentlemen can give an accurate answer to that question. Some of these bonds are option bonds, and I don't know but all of them, and at this time the bonds are under the option; that is, they may be called at any time.

Mr. Hole, of Beadle: What rate of interest are they now bearing?

Mr. Kellam, of Brule: From four to six per cent. There are but \$710,000 in bonds which South Dakota assumes. The other is an estimate amount. The amount of bonds assumed is \$710,000.

Mr. Hole of Beadle: I had heard it intimated that this \$710,000 was drawing a high rate of interest and there was an option now to pay it off.

Mr. Kellam, of Brule: There are certain six per cent bonds upon which the option has occurred. They may be retired at any time by the payment of them now. There is no question but what bonds could be issued by the new State, bearing not to exceed 3½ and 4 per cent., and sold, and the money realized upon these bonds used for the retirement of the six per cent. bonds.

Mr. Hole: And if we adopt the report, or the amendment, would we have power then to refund any part of the \$750,000, or would we have to pay it? If we have no power to refund that, it would not be a business policy to so tie ourselves that we could not refund that and float it at a lower rate of interest.

Mr. Clough, of Codington: Here is a question that I want to ask: We have been listening to a great deal of talk about the solemnity of this Constitution. Here is Section 5: Let's read it.

"Consent is given that Congress may make such provision for the payment by this State of the existing indebtedness of the Territory of Dakota as it shall deem just and equitable, and this State shall assume and pay so much thereof as Congress may provide."

Now then, Mr. President, after some weeks and months of careful study of this Constitution, I do not think many of us are willing to assume that it was loosely drawn or that very many chances were taken or much likelihood for hiatus. It seems to me if this

Section 2, that declares that \$500,000 shall be the aggregate debt, had been meant to cover the indebtedness then outstanding against Dakota, that it would have read in this way: "Consent is given that Congress may make such provision for the payment by this State of the existing indebtedness of the Territory of Dakota as shall be in conformity with Section 2." Now, I do believe that if the \$500,000 had been meant to cover the then indebtedness that it would have so read—as I have read it—"in conformity with Section 2"; because this Constitution is most wonderfully overlapped and under-lapped. I do not see, those words being lacking, how it can be otherwise than that the \$500,000 was meant to be outside of the then existing indebtedness. You may reason all the way along through the line of analogies, and they have provided this and that all the way through the Constitution. It does not say "in conformity with Section 2", but it does say "Congress may make provision",—and then it sticks on the other.

Mr. Caldwell, of Minnehaha: Mr. President; the point made by the gentleman from Beadle it seems to me ought to satisfy this Convention that it not only has not the power to change the sum of \$500,000, but that it would be very bad business policy for it to make any change in such amount.

Now, as has been stated by the Chairman of the Committee that went to Bismarck, there are considerable amounts of this \$710,000 bonds, which are running at a higher rate of interest than it would be possible for the State of South Dakota to secure, but when the State of South Dakota, if it shall have the power to do so, undertakes to declare its bonds open—these high rate bonds—and undertake to issue new bonds at a lower rate of interest, in their stead, it transfers the amount of that other indebtedness from the Territorial indebtedness inherited, over to actual State indebtedness directly assumed. Now, if the limitation be put upon the State to such an extent that it shall have only a leeway of \$100,000 it can't then possibly avail itself of the opportunity which would offer for securing of a lower rate of interest with the \$500,000 limitation upon the State indebtedness, pure and simple. The State will have power to take up Territorial bonds and issue a lower rate of interest bonds, for the same amount; and so, for this convention to reduce the limitation of the pure and simple State indebtedness to a sum less than \$500,000, would be merely crippling the State and preventing it from availing

itself of the advantage it would otherwise have,—not being able to trade off Territorial high-rate bonds for State low-rate bonds. So it seems to me that, whether this question be looked at from the standpoint of the power which this Convention possesses under the Enabling Act, or whether it be looked at from the point of what is best interest of the State, unquestionably that that limitation of \$500,000 should remain precisely as it is.

Mr. Hole, of Beadle: Mr. President; that my position may not be misunderstood, I wish to say that I am not one of those who wish to increase the indebtedness. I think the intention of the framers of the Constitution of 1885 was that the indebtedness, which should be found due from the Territory, was to be taken from the \$500,000, and that the balance of it should be the lee-way and my position today is that we should approximate that as nearly as possible. Our indebtedness today is away beyond the amount of that indebtedness the Omnibus Bill provides we shall pay, and that is in the neighborhood of \$750,000. Now the indebtedness which we will start in with is just as much covered by the Omnibus Bill as the \$750,000. We have exceeded that \$500,000. Let us keep inviolate the Constitution as far as the \$500,000 is concerned, but make it impossible for us to use any of that \$500,000 until this other has been either converted into State debt or paid. Now, I think it is proper to convert as much of the \$750,000 as possible under the \$500,000 limit, into a State debt at a lower rate of interest, thereby making from \$15,000 to \$18,000 a year. That is a business proposition, coming to us as business men; and that this may be very thoroughly studied and canvassed, I would think best to refer it back to the Committee. The question, and the report as adopted here, will effect the negotiability of these bonds, and I think that that question should be considered by the Committee—and so report—to give such power to do this, and so that there will be no question about the bonds when issued and that they can be floated at the lowest rate.

And I move you that this matter be referred back to the Committee, with the view of shaping it up to meet the desires of the Convention that have been expressed here.

Mr. Price, of Hyde: Mr. Hole, do you think this affects the negotiability of those bonds if it is submitted to the people and ratified by the people, and we are admitted as a State in the Union, under it?

Mr. Hole, of Beadle: I want this Constitution to be so plain that they can make it as State debt and get a lower rate of interest.

Mr. Corson, of Lawrence: Mr. President; I rise to make a suggestion in regard to this matter, which has occurred to me from reading Section 3, as to the construction that has been put upon this matter of \$500,000.

The language of Section 2 is: "The State may contract debts never to exceed with previous debts in the aggregate \$500,000". Previous debts of what? Of the Territory of Dakota, or of the State? It seems to me Section 3 throws some light upon this Section:

"The debt of any county, city, town, school district, or other subdivision, shall never exceed 5 per centum upon the assessed value of the taxable property therein."

Now mark;

"In estimating the amount of indebtedness which a municipality or subdivision may incur, the amount of indebtedness contracted prior to the adoption of this Constitution shall be included."

It would seem by the care they have taken in Section 3 that they intended by Section 2 to only include the indebtedness of the State, which the State might contract after it became a State.

But I rise more particularly at this time to second the motion of the gentleman from Beadle, for this reason: I was informed a few days ago by the Treasurer, that we have quite a large amount of bonds—\$150,000. I think—that are drawing, I believe, 6 per cent. now, but the parties who hold the bonds won't take $3\frac{1}{2}$ per cent. Yet if he had the power, he could issue refunding bonds at a lower rate of interest, negotiate them in New York, and use that money to take up the old bonds. It seems to me that this Convention ought to devise some way by which this \$750,000 indebtedness, at all events, can be refunded from time to time. I do not believe it is policy for us to attempt to pay it off, and it looks to me, upon reading the sections of this Article this morning, as though it will be necessary to amend that before long, because I don't believe it would be best for us to pay off that indebtedness in the next ten years. It would be an injustice to our pioneers to ask them to pay off all that indebtedness and leave it to all subsequent generation not to pay a dollar. It is not fair or just. All we ought to be asked for the next twenty-five or fifty years to come, is the payment of the interest. I am of the opinion that before long we will find it necessary to amend that Section of the

Constitution, and I think it ought to be provided for at the very next session of the Legislature, striking out that section requiring us to pay one-tenth of the principal, as well as the interest. Provide for the interest, but allow the principal to remain. But if we can make some provision at this time by which the Treasurer can refund these bonds, it seems to me a business proposition and policy to do so.

And, while I have great confidence in the Committee, I would move as an amendment to the motion of the gentleman from Beadle, that the gentleman from Beadle and the President of this Convention be added to the Committee for the purpose of devising some way by which we can from time to time refund the \$750,000 provided for in the Constitution now—refund it by issuing other bonds and selling them in the market and getting the money with which to redeem these option bonds, and, as it is a very important matter, I think we ought not to hurry over it too much. If we can provide for the funding of this \$750,000 without providing for this \$500,000 limitation, I should be in favor of reducing the amount to \$100,000 or \$150,000. I think our Constitution is so easily amended that it will only take two years at the farthest to provide for an indebtedness of that kind; and therefore I would be in favor of limiting it, if it can be done at this time; but at the same time I want to be very careful that we provide for the refunding of this \$750,000, so that there can be no possible question about that. We know how careful capital will be, and especially where they advance money upon bonds at a low rate of interest. They want to feel perfectly secure and they want long-time bonds too. Now then, if that can be so arranged in our Constitution to cover our refunding, then I should most certainly be in favor of reducing the amount of indebtedness which the State can incur in the future to as low an amount as has been stated—\$100,000 or \$150,000.

I therefore urge this matter be referred and that these two gentlemen be added to the Committee, to assist them in preparing some scheme by which this \$750,000 can be taken care of.

Mr. Wood, of Pennington: Mr. President; we have got to dispose of this matter and we ought to do it now. Our time is very short. The position of the gentleman from Davison is unquestionably correct, to-wit: The Omnibus Bill, by reason of the size of the debt we must assume; rendering it necessary, by

that fact, that we must make such amendment as the exigencies of the case requires. I agree with that completely. The amendment is simply increasing the \$500,000 to \$850,000, in effect, but it don't cut off or abridge the power to place that debt in any form which the Legislature may desire, to-wit: Refund; issue new bonds; take up the old ones; as the proposition stands under the amendment. Now, if that is not the case, I surely don't understand anything about the meaning of words. They can refund and take up that indebtedness if they shall desire to. The debt is provided for and the refunding is provided for. A re-reference can answer no useful purpose, and I am sure we have consumed sufficient time here.

Now, with reference to the adoption of the amendment of the gentleman from Moody county—the amendment of the gentleman from Codington county is practically the same thing; the amount is a little larger, and that is all—I don't think we can safely put it in that way with any one with a power to create this amount of indebtedness, under the circumstances in which our State will be placed at first. With Iowa it would be different. She has the power to contract \$250,000 indebtedness. Today she owes nothing. Iowa today is not paying one cent on outstanding indebtedness; she has paid off the last dollar. It is not as necessary as it is in the new State. It is not whether we can safely trust the new Legislature. It is a question. Can the State, under these circumstances, resist the temptation successfully to go to the limits of the indebtedness? I don't think it can be done and therefore I think we ought to make the limit as low as possible. Now, having the power to amend the amount of indebtedness, of course the power to amend gives us the right to amend in any manner we may agree upon, and this proposition to increase that to \$800,000, with the limitation of course, as it now stands, seems to me, carries with it the power to refund, and the whole difficulty is overcome and the amendment is proper and properly made when we adopt the report as amended.

Mr. Davies, of Edmunds: Mr. President: I rise to a point of order. There is a motion before the house, and a substitute, neither of which have been disposed of.

Mr. President, pro tem: The proposition is to adopt the report of the Committee; to that the gentleman from Moody moves an amendment by inserting "\$100,000" instead of "\$500,000"; the

gentleman from Codington moves to change that to "\$200,000"; to that the gentleman from Clay raises a point of order, which the Chair sustains; the gentleman from Beadle moves to refer the matter back to the Committee; the gentleman from Lawrence moves as an amendment, that the gentleman from Beadle and the President of the Convention be added to that Committee, which motion has had no second.

The question now recurs upon the motion to refer this back to the Committee. Is the Convention ready for the question?

Mr. Edgerton, of Davison: Mr. President; if I remember the discussion in the early hours of this Convention, in which I argued that we were restricted in our powers by the Omnibus Bill, some very eminent gentlemen took the opposite view. It is with great satisfaction that I find today they are more extreme in their strict construction of the Omnibus Bill than I am.

My eminent friend from Hyde—and no one admires his eloquence more than I do—asks me if I am afraid to trust the Legislature. I answer, with certain limitations, never; but I am less afraid to trust the people of this commonwealth. I can imagine a time next winter when there will be very few Democrats in the Legislature, but there will be a great many of them at the polls! I want them to all have a chance to vote upon that question; I want my friend himself to vote upon that question when the Legislature shall submit the amendment. In all probability he will have no vote in the Legislature, and I want him to have the power to vote upon this question!

He asks me if I am afraid to trust the Legislature. All through this Constitution there are limitations; limitations of the most extraordinary kind. I call the gentleman's attention to the limitations on the Legislature: It has no power to locate or change a county seat—and yet the gentleman asks me if I am afraid to trust the Legislature. It has no power to grant divorces; nor to change the names of persons or places, or to constitute one person the heir-at-law of another; or to regulate county and township affairs; or to incorporate cities, towns and villages, or change or amend the charter of any town, city or village, or to lay out, open, vacate or alter town plats, streets, wards, alleys or public ground; nor to provide for sale or mortgage of real estate belonging to minors or others under disability; nor to authorize persons to keep ferries across streams wholly within the State; nor to remit fines, penalties

or forfeitures; nor to grant to an individual, association or corporation any special or exclusive privilege, immunity or franchise whatever; nor to provide for the management of common schools; nor to create, increase or decrease fees, percentages or allowances of public officers during the term for which officers are elected or appointed. And yet the gentleman asks me if I am afraid to trust the Legislature!

As I said before and have frequently said, there is probably no other Constitution, with possibly that of the State of Pennsylvania excepted, that is so guarded in its limitations and restrictions of the powers of the Legislature, as the Constitution of South Dakota. And it is because the framers of this chose to restrict the Legislature and to say that they should not exceed the limitations except by submitting the question to the people.

Now, as I said the first time I occupied the floor on this question, if it is necessary to increase that indebtedness, all you have to do is to have the Legislature submit the proposition to the people; if it shall have been found necessary to increase that indebtedness to \$200,000 or \$300,000 or \$500,000, all you have got to do is to have the Legislature, by a bare majority, submit the proposition to the people, and the people, by a bare majority, can increase the State debt.

Now, I will ask my friend from Hyde, if he is afraid to trust the people of this commonwealth upon that most important question?

Mr. Price, of Hyde: No, Sir, I am not afraid to trust the people, and I am not afraid to trust the Legislature either, because its members come direct from the people.

Mr. Edgerton, of Davison: Now, one thing more, outside of this question. So far as the dignity and importance of this Omnibus Bill is concerned, the gentleman and I agree. No man is willing to accord more credit than I to that handful of Democrats, not exceeding twenty in number, who, when it became inevitable that Benjamin Harrison was to be the President of the United States! voted in the Senate and the House of Representatives for this Omnibus Bill. It was the unanimous vote of the Republican party in Congress, backed by about twenty Democrats in the House of Representatives! I say this out of no disrespect to the Democratic party, but when it is claimed that we are entitled to admission and that we have gained it solely and exclusively owing

to the magnanimity of the Democratic party, I say we owe it to the twenty Democrats who voted for it in Congress, and to the unanimous vote of the Republicans in Congress. I will make this exception, that the Democratic party of South Dakota, with very few exceptions—here and there one—has been for years the friend of South Dakota—as much as the Republicans; and upon this question we have stood shoulder to shoulder up to the present time.

Mr. Van Buskirk, of Codington: Mr. President; when I drew this amendment and put \$200,000 in there I was not wedded to the sum of \$200,000, but I thought it well to retain \$500,000, so that when we should have disposed of and paid \$710,000, or about \$750,000, then this sum named would stand in the Constitution as adopted in all of its intendments. I should just as soon have it \$100,000 as \$200,000, but I want to retain that \$500,000 in its integrity. I want it so that when these other sums were paid, that this \$500,000 would stand there.

Mr. Davies, of Edmunds: I want to ask if your motion, sent to the table, refers to that fact?

Mr. Van Buskirk, of Codington: It is possible that the suggestion of my friend, Mr. Hole, who has possibly a little more acquaintance with this matter of bonds than I have, is correct. I would prefer that there be no change that there will be no question about the power to refund.

Mr. Wood, of Pennington: I understand that it contains in its provisions, power to refund. I understand that when that is paid off the limit will stand \$100,000; as soon as the debt assumed by the State from the Territory is paid off, the debt will stand \$100,000. In other words, we simply give a lee-way of \$100,000 over the debt assumed.

Mr. Van Buskirk, of Codington: Now, to continue, my idea was, as I said, to retain this \$500,000 provided for here, in its integrity. I do not think it is any violation of the spirit or terms of that to provide the limit; say to limit it to the sum of \$100,000 or \$200,000. When I put the sum of \$200,000 in there I did it for this reason; it occurred to me that South Dakota might desire to build a capitol, or something of that kind, and that \$100,000 would not be enough; but I am willing \$100,000 should go in, and it may be well to add there something to make it un-

questionable that power to refund is given and that the refunding shall not be deemed payment.

I am in favor of its being recommitted here. I think perhaps the Committee now may take it up and handle it more speedily than we can.

Mr. Stoddard, of Brown: Mr. President; is the motion to refer it back to the Committee?

The President, pro tem: Yes, Sir.

Mr. Stoddard, of Brown: Was the amendment of Mr. Corson to add Mr. Hole and the President of this Convention to that Committee, allowed?

The President, pro tem: No, Sir; that motion was not seconded.

Mr. Stoddard, of Brown: Well, I will second that motion; that is, if the President will consent. I will second the motion if the President will agree to serve on that Committee.

Mr. Edgerton, of Davison: I don't think I would agree to serve on that Committee. My convictions are too well settled for that. I think my friend Mr. Price, or the gentleman from Clay, would be better selections. I take knowledge that my convictions are so clear and well settled upon that, that I would be an improper person to sit upon that Committee. I would much prefer that Judge Corson or Judge Price, or, some other gentleman should serve.

Mr. Stoddard, of Brown: If Judge Corson will consent to take his place, I will second the motion.

Mr. Corson, of Lawrence: No, I should rather be excused. I am not a good financier. But some way should be provided to refund this indebtedness.

Mr. Stoddard, of Brown: Well, I am in favor of its being referred back to the Committee, and then they will extend the courtesy to these gentlemen of asking their advice about it. I think it is no more than prudent that we refer this matter back to the Committee now, and for them to perfect their report and bring it in at a later time. We can't get away before Monday, and I would rather go home having this matter as ready correct as possible, and certainly the gentlemen of this Convention are not unanimously convinced that the report covers the difficulty suggested.

Mr. Jolley, of Clay: Mr. President; in behalf of the Committee that tendered this report, we seriously object in having

to go over this whole matter again. It has been clearly demonstrated that the report of the Committee and the signing of the report of the Committee doesn't bind anyone; after we have agreed to something, then it is discussed here on the floor of the Convention and those men who have signed the report go back 2n it and vote some other way. If there is anything in the report of this Committee that don't agree with the views of any of the gentlemen, there is certainly a way to amend it and make it satisfactory. This Committee could not agree among themselves; this is a compromise. The Chairman had serious objection to signing such a report as this, but owing to the eloquence of certain gentleman, he finally did so. I represent the same element in the Republican party that my friend from Hyde does in the Democratic party, with this difference; I never have any money of my own to spend; and I also differ from him in this; that no one I ever knew of has ever trusted me to spend any money of theirs! If necessary, let us go into Committee of the Whole, but don't allow the spectacle to again occur in this Convention of having a committee sign a report and then eleven of the twenty-five members go back on it.

(Cries of "Question, question, question".)

The President, pro tem: The question before the house is on the motion of the gentleman from Beadle to refer this back to the Committee. Is the Convention ready for the question?

Mr. Sherwood, of Clark: Mr. President; that Committee cannot possibly agree on any further report. We did the best we could to agree on what we have now got before the Convention; but if it should come back at all, what is the object of referring that portion of the report drafted by the Committee from North Dakota? If it should go back at all, I ask the mover of it to refer only that portion of it to the Committee that has been under discussion here.

Mr. Hole, of Beadle: The only thing I had in my mind was the proper wording of this matter with regard to bonds, so there would be no question as to the negotiation of them.

Mr. Jolley, of Clay. Well, move an amendment to this report.

Mr. Hole, of Beadle: Such things can be done better in Committee, and I think this Convention is ready to adopt the report of this Committee when that is made clear.

Mr. Spooner, of Kingsbury: Mr. President; as a member of

that Committee, I shall oppose the re-referring of this report. All considered it carefully and honestly, and the report was a compromise, and if it is re-referred it will come in the same shape that it did before, and we will have the same ground to go over. Now, I will give you good warrant for that. Not that we wish to make the limit of the indebtedness far above what it should be, but the question of power has come up before this Convention and in our Committee in such a manner that we have been afraid to touch those matters; and now you might as well consider the report here, in Committee of the Whole, if you choose, or, before the Convention; but I shall oppose the referring back to the Committee.

Mr. Dickinson, of Day: There is one thing that has not been directly touched upon, and that is the most important. The financial part is something that has to be carefully drawn, and especially if we propose to refund out indebtedness, it is better to take the advice of men who are dealing in bonds, and to have the proposition put in such terms as in the judgment of such men, the bonds can be safely and easily negotiated. Mr. Hole says, that as one who has dealt extensively in bonds, he would not be willing to take these bonds in the wording this matter is in now. It seems to me it will be better to refer this back, so as to have the wording made so clear that there will be no question as to the negotiability of the bonds. For that reason I am very much in favor of referring it back.

Mr. Willis, of Aurora: Mr. President; I am convinced now, again, that we have reached that point in this discussion—in this desultory discussion—where I ^{am} confident—I am confident. (Cries of "Question, question"). being unaffected by this little demonstration around me—that this Convention is ready on this point. I sympathize with that Committee on this little extra work they will have to do, but I sympathize more with this Convention and with the significance of the results to accrue to the people of this Territory, and I say, in this "rattled" condition, we ought to feel ready now to refer this back. (Cries of "question, question, question").

The President, pro tem: The question is upon the motion to refer back to the Committee. As many as are of the opinion that the motion prevail, say aye; opposed, no.

The Chair is unable to decide.

As many as are of the opinion that that motion prevail will rise till you be counted.

The vote stands 30 and 30, and the motion is therefore lost.

Mr. Corson, of Lawrence: Mr. President; I move to postpone further consideration of this matter until two o'clock this afternoon.

A Delegate: I second the motion.

The President, pro tem: It has been moved and seconded that the further consideration of this matter be postponed until two o'clock this afternoon.

Mr. Wood, of Pennington: Mr. President; I am going to insist that that motion do not prevail—

Mr. Van Buskirk, of Codington: Mr. President; I rise to the point of order that this question is not debatable.

The President, pro tem: The Chair will rule that the question in not debatable.

Mr. Wood, of Pennington: Then I simply advise the Convention to vote it down.

The President, pro tem: The question is upon the postponement of the further consideration of this matter until two o'clock.

As many as are of the opinion that the motion prevail, say aye; opposed no.

The noes seem to have it.

(Division called for.)

Those in favor of the motion will rise and stand to be counted.

Thirty-one in favor of the motion and twenty-eight against.

So the motion prevails.

Mr. Sherwood, of Clark: Mr. President; I move we take a recess until two o'clock.

A Delegate: I second the motion.

The President, pro tem: It has been moved and seconded that the Convention do now take a recess until two o'clock.

As many as are of the opinion that the motion prevail, say aye; opposed, no.

The Chair is unable to decide. Those in favor of the motion will rise and stand to be counted.

Mr. Dickinson, of Day: Mr. Chairman; if it be proper, I would like to ask if there is any business we can transact before two o'clock?

The President, pro tem: A vote is being taken.

There are 37 ayes and 23 noes.

So the motion carries and the Convention will take a recess until two o'clock.

RECESS.

Two o'clock P. M.

The Convention re-assembled with the President in the chair.

Mr. Caldwell, of Minnehaha: Mr. President; I would ask unanimous consent for the introduction of a very important resolution at this time. I will read it myself, because the chirography is a little questionable:

WHEREAS, There are at present outstanding bonds of the Territory of Dakota, aggregating \$107,500, of which \$77,500 bears five per cent interest, and \$30,000 six per cent. interest, which are payable at the option of the Territory after May 1, 1888; and

WHEREAS, The Territorial Treasurer has power under the Territorial law to declare said option; and,

WHEREAS, It is the judgment of said Treasurer that it would be possible under the present favorable condition of the bond market to refund said bonds at a much lower rate of interest; therefore, be it

RESOLVED, By this Convention, that in its judgment, the public welfare would be subserved by such refunding, and that it hereby requests the Territorial Treasurer to take steps looking toward such action; provided, however, that the rate of interest which the refunding bonds shall bear shall not exceed four per cent. per annum, and that any premiums secured upon such bonds should inure to the benefit of the general fund of the Territory.

The President of the Convention: The gentleman asks unanimous consent to consider the resolution, and the Chair hears no objection.

Mr. Caldwell, of Minnehaha: Mr. President; I will say that the Territorial Treasurer feels some little hesitation in declaring this option, under the circumstances that prevail at this time, of the division of the Territory, etc., and this has been prepared with his knowledge and advice, in order that there may be something like a warrant to him for declaring the option, and he says he has not any question but that he can refund these bonds at four per cent. and that such refunding would save the State of South Dakota at least \$25,000 of interest, for the reason that the bond was originally a Territorial bond and the option is declared on its face to be the option of the Territory of Dakota, and there might be a question with the bond purchasers as to whether or not the State of South Dakota could declare an option which it was the province of the Territory of Dakota to declare, and holders

of bonds bearing this rate of six per cent. might stand out and question the option declared by the State of South Dakota.

A Delegate: I second it.

The President of the Convention: Is the Convention ready for the question?

Mr. Dickinson, of Day: Mr. Chairman; I have heard it stated that those bonds could be refunded at $3\frac{1}{2}$ per cent., but we are liable to have the outside limit used instead of the inside—

(Cries of "question, question").

The President of the Convention: As many as are in favor of the adoption of the resolution, say aye; opposed, no.

The ayes have it and the resolution is adopted.

The question now before the Convention is on the adoption of the report of the Committee on State Indebtedness, to which the gentleman from Moody moves an amendment that "500,000" be stricken out and that "100,000" be inserted. If I remember right, that is the condition.

Mr. Jolley, of Clay: Mr. President; the gentleman from Codington has an amendment striking out "100,000" and inserting "200,000".

The President of the Convention: Is the Convention ready for the question on the striking out of the "500,000", as it occurs in the original report of the Committee on State Indebtedness, and inserting the larger sum, "200,000"?

Mr. Neill, of Grant: Mr. President; if I understand the situation of the question, we have just one amendment to the original motion.

The President of the Convention: Two.

Mr. Caldwell, of Minnehaha: I believe the other was declared out of order.

Mr. Williams, of Bon Homme: The amendment by the gentleman from Codington county was declared out of order, so that when we took a recess the question was on the amendment of the gentleman from Moody county, to insert "100,000" instead of "500,000".

The President of the Convention: I understand the condition of things as the gentleman from Clay stated—that the gentleman from Codington offered an amendment or a substitute, changing the whole provision and providing that certain bonds should be taken up and new bonds issued; that someone raised a point o

order and that the Chair decided the point of order well taken; and then, as I understood it, the gentleman from Codington offered a new amendment to strike out the words or the figures "500,000" and insert the figures "200,000".

Mr. Neill, of Grant: I understood that there was only one amendment before the house.

The President of the Convention: If the Clerk will read the Journal—

Mr. Peck, of Hamlin: Mr. President: I—

Mr. Neill, of Grant: Mr. President, if there is a second amendment before the house, I have nothing to offer.

The President of the Convention: The Clerk tells me that the Journal is not in the room. I rule this, in the absence of the Journal—which should be here, Mr. Clerk, at all times when the Convention is in session—and upon the statement of the gentleman who presided in the Convention at the time, Mr. Williams, that the order was as he states it and that there is but the one amendment before the Convention.

Mr. Neill, of Grant: I wish, Mr. President, to offer this as a substitute:

SEC. 3. That the indebtedness of the State of South Dakota, limited by Section 2, of this Article, shall be in addition to the debt of the Territory of Dakota assumed by and agreed to be paid by South Dakota; provided, that \$350,000 of said indebtedness limited by Section 2 be part of said Territorial indebtedness until the same is fully paid.

Mr. Jolley, of Clay: Does that relate to the same subject matter, Mr. President?

The President of the Convention: I think it is of the same order as that passed upon by Judge Williams before dinner. It was then ruled out of order and I am not disposed to reverse the ruling of the chair.

The question is upon the motion to strike out the figures "500,000" and insert "100,000". All those of the opinion that the motion prevail, say aye; those opposed, no.

The ayes appear to have it. The ayes have it.

(Division called for).

All those in favor of the motion that "500,000" be stricken out and "100,000" inserted, will rise and stand to be counted.

The ayes are 42 and the noes are 15.

So the motion prevails.

The question now recurs upon the adoption of the report of the Committee, as amended.

Mr. Neill, of Grant: Mr. Chairman; I wish to present the amendment I offered before. I think it is in order now, and I will move its adoption.

SEC. 3. That the indebtedness of the State of South Dakota, limited by Section 2, of this Article, shall be in addition to the debt of the Territory of Dakota assumed by and agreed to be paid by South Dakota; provided, that \$350,000 of said indebtedness limited by Section 2 be part of said Territorial indebtedness until the same is fully paid.

Mr. President, I just wish to explain the intent of that amendment. The effect of this amendment will be to make the limit \$150,000. The amendment of the gentleman from Moody makes the limit \$100,000. So far as that is concerned, I care nothing about that; but the point I wish to preserve is this—I don't wish to attack that limiting clause of the Constitution of 1885, making the limit \$500,000. To save attacking that provision of the Constitution of 1885, I make this provision, by authority of the Omnibus Bill in regulating the Territorial indebtedness, and simply reserve \$350,000 out of that \$500,000, to apply on this Territorial indebtedness, and it is to apply on it continuously until all that Territorial indebtedness is paid. So that there is no chance of exceeding this \$150,000 limit at all until that Territorial indebtedness is cleared off. Then of course the \$500,000 limit will be in force and will maintain the integrity of the Constitution of 1885. Our people are economical enough to take fifteen or twenty years before that \$500,000 clause will come into effect. They will pay off that debt, and they are perfectly safe to trust in the future not to incur more of that \$500,000 than is necessary. It obviates the difficulty found in that provision of the Constitution of 1885.

Mr. Humphrey, of Faulk: What part of \$100,000 is \$350,000? That has been changed now by the adoption of the amendment, from \$500,000 to \$100,000. How do you amend it by your resolution?

Mr. Neill, of Grant: Coming in as a substitute to the amendment.

Mr. Van Buskirk, of Codington: Mr. President; I would like to inquire—

The President of the Convention: (Not observing Mr. Van Buskirk).

As many as are in favor of the adoption of the amendment, will say aye—

Mr. Van Buskirk, of Codington: One moment, Mr. President. I just came in, and have not heard the resolution.

Mr. Neill's amendment was read by the Clerk.

Mr. Jolley, of Clay: Mr. President; we certainly can't apply that amendment. It is Section 3, I think, in the report. Now, Section 2 is amended so that \$100,000 is all that is put in there, instead of \$500,000. The amendment says that \$350,000 of that \$100,000 shall be, so and so!

The President of the Convention: As many as are in favor of the adoption of the amendment, will say aye. (No delegate voted in the affirmative.) Those opposed say no. (The delegates voted unanimously against the adoption of the amendment). (Great laughter).

The motion is lost!

The question now recurs upon the adoption of the report of the Committee.

Mr. Neill, of Grant: I would like to hear the report read now, Mr. President.

The President of the Convention: The Clerk will read the report.

(The Clerk announced that the report had been taken by the Committee from his desk.)

Mr. Van Buskirk, of Codington: Then, Mr. President, I would offer as a substitute, to strike out Sections 2 and 3 of the report of the Committee and substitute in place of those two sections the following:

For the purpose of defraying extraordinary expenses and making public improvements, or to meet causal deficits or failure in revenue, the State may contract debts, never to exceed, in the aggregate, five hundred thousand dollars, exclusive of the indebtedness to be assumed by the State of South Dakota upon the division of the Territory of Dakota, and no greater indebtedness shall be incurred except for the purpose of repelling invasion, suppressing insurrection or defending the State or the United States in war; and provision shall be made by law for the payment of the interest annually and the principal when due, by tax levied for the purpose, or from other sources of revenue; which law providing for the payment of such interest and principal by such tax or otherwise shall be irrepealable until such debt is paid; provided, that until the present debt of South Dakota, assumed upon

the division of North and South Dakota, shall have been paid, South Dakota shall not incur any indebtedness in excess of the sum of one hundred and fifty thousand dollars, but the Legislature may refund the indebtedness assumed and to be paid by South Dakota upon such division, and may use any part of the said sum of five hundred thousand dollars in excess of the said sum of one hundred and fifty thousand dollars to refund said indebtedness, and for no other purpose, but such refunding shall not be deemed a payment of such present indebtedness.

The idea of this is, as you will readily see, that in no event can the State of South Dakota become indebted over and above the debt which we have to assume under the Omnibus Bill, \$150,000 added. That is the extent to which it can go, by any possibility. This provision allows the State to refund that debt and to use the sum of \$350,000 of the \$500,000 to refund, but as long as you simply change one obligation for another that is not payment, and it confers upon the Legislature power to refund, at a less rate of interest, if possible; and I offer that as a substitute for the report of the Committee.

The President of the Convention: You have heard the substitute as offered. As many as are in favor of the substitute—

Mr. Caldwell, of Minnehaha: Mr. President; it appears to me that this substitute settles a great many difficulties that have occurred to the members of the Convention. It seems to me to meet the emergency, as it provides for something which the report does not provide for. I have just been talking with the Territorial Treasurer, and he says that is a matter which he feels is of wonderful importance, and if this provides for these difficulties, it is an excellent thing. I will call for the reading of this substitute again. I would like to have it read slower, so that we can take it all in.

The President of the Convention: The Clerk will read it.

(The substitute of Mr. Van Buskirk was read by the Clerk.)

Mr. Jolley, of Clay: Mr. President; I have just been informed by the Territorial Treasurer that \$150,000 will not be sufficient to carry us until February, and \$350,000 will not be enough to amount to anything in the refunding, and his idea is that the \$100,000 ought to be raised to \$250,000 and the \$350,000 lowered to \$250,000.

Mr. Wood, of Pennington: Mr. President; I am opposed to giving this State the right to contract that much indebtedness

over what we assume. There is no necessity for it, and I know by past experiences that the tendency is to run up as far as we can go. Of course as soon as the present debt is paid off they can run it up to half-a-million. There is a constant temptation for all sorts of schemes, for appropriations and the like, and I say keep that indebtedness as low as we can.

The President of the Convention: As many as are in favor of the adoption of the substitute, will say aye; those opposed, no.

The noes appear to have it. The noes have it and the substitute is lost.

The question now recurs upon the adoption of the report of the Committee, as amended.

As many as are of the opinion that the report be adopted, say aye; those opposed, no.

The ayes have it and the report of the Committee, as amended, is adopted.

Mr. Wood, of Pennington: Mr. President; I move that the action of the Convention in adopting the report of the Committee, be reconsidered and that the motion be laid upon the table.

A Delegate: I second the motion.

The President of the Convention: It has been moved that the action of the Convention in adopting the report of the Committee, as amended, be reconsidered and that the motion to reconsider be laid upon the table. Is the Convention ready for the question?

As many as are of opinion that the motion prevail, say aye; those opposed, no.

The ayes appear to have it. The ayes have it.

(Division called for).

Those of the opinion that the motion be tabled rise and stand to be counted.

Those of a contrary opinion, rise and stand to be counted.

The ayes are 30 and the noes 27.

So the motion prevails.

What is the further pleasure of the Convention? I would state for the information of the Convention, that we have now about an hour, if we accept the invitation of the Burlington road to go to Spirit Lake.

I am not advised as to whether this completes the Constitution, so that it can go into the hands of the enrolling Clerk, or not.

Mr. Caldwell, of Minnehaha: Mr. President; I would ask if

the Article reported by the Commission has not been turned over to the Enrolling Committee?

Mr. Hartley, of Hand: I think not.

The President of the Convention: I am informed by the Clerk of the Convention that it has been.

What is the further pleasure of the Convention?

Mr. Humphrey, of Faulk: Mr. President; I send up the report of the Committee on Printing, and I move its adoption.

(The report was read, as follows:)

Sioux Falls, August 3, 1889.

MR. PRESIDENT:—

Your Committee on Printing, having had under consideration the advisability of printing blank certificates of indebtedness, relative to the expenses of this Convention, direct me to report, recommending that this Convention do provide for the printing of one hundred and fifty (150) blank Certificates of Indebtleness, to comply in form to Rule 46, with the addition thereto in the beginning of said for the words, "This is to certify". All of which is respectfully submitted.

H. A. Humphrey,
Chairman of Committee.

The President of the Convention: The gentleman from Faulk moves the adoption of the report of the Committee on Printing.

As many as are in favor of the adoption of the report, will say aye; those of a contrary opinion, say no. The noes appear to have it; the ayes have it and the report is adopted.

A Delegate: Mr. President; I move we adjourn until two o'clock next Monday.

Mr. Corson, of Lawrence: Mr. President; it seems to me we could adjourn to an hour earlier than two o'clock. Many of us wish to get away on the evening train and an adjournment until that hour may prevent the final adjournment until the next day.

The President of the Convention: I will say, for the information of the Convention, that Mr. Brown informed us here, probably before you all came in, that those who went to Spirit Lake could not be back here until 11:30 o'clock in the forenoon.

Mr. Hole, of Beadle: I suggest that we adjourn until one o'clock, and I make that as a motion.

A Delegate: I second the motion.

The President of the Convention: It has been moved that the Convention do now adjourn until one o'clock Monday afternoon.

As many as are of opinion that the motion prevail, say aye; opposed, no.

The ayes have it and the Convention stands adjourned until Monday afternoon next, at one o'clock.

ADJOURNED.



THIRTY-THIRD DAY.

Monday, August 5th, 1889.

The Convention re-assembled at one o'clock P. M., with President Edgerton in the chair.

Prayer by Rev. S. F. Huntley, a member of the Convention:

Infinite Father, we recognize Thee as the source of all wisdom and of all power, and we look unto thee as we are now assembled for the last time in this Convention, for Thy benediction to rest upon us.

We pray Thee that Thou wilt guide, that this work now being accomplished shall go unto the people of this State, meeting their approval, laying the foundations of the prospective State and under the smile and approval of Heaven.

Bless us, each and everyone, as we go to our homes. Prosper us in the labor Thou callest us to do. Direct our minds and our hearts and let Thy blessings rest upon our homes and upon all the homes here represented—all the homes of our State. Give prosperity. Give that peace and happiness which comes from trusting in God. Let Thy blessing rest upon all the departments of government. Give energy and strength. Help us in the discharge of every duty.

And when we shall have accomplished the duties of life and ended our days of probation, receive us to Thyself, in Heaven.

We ask it in the name of Christ Jesus, our Redeemer,
AMEN.

Mr. Price, of Hyde called to the chair.

Mr. Edgerton, of Davison: Mr. President; while I won't say that I have any apprehension that our bonds cannot be changed into new bonds without affecting that provision of \$100,000 limitation, there are some men who fear that the officers who shall negotiate the bonds will have some apprehension that we are violating the Constitution, and for the purpose of obviating the possibility of objection under that, I ask unanimous consent to introduce this as an additional provision; and the enrolling Clerk has said that

putting this on will not delay the completion of the work fifteen minutes.

The President, pro tem: The Clerk will read the resolution.

The resolution was read as follows:

In order to facilitate action in accordance with resolution adopted August 3d, 1889, I ask unanimous consent to offer the following:

SECTION 8. The Territorial Treasurer is hereby authorized and empowered to issue refunding bonds to the amount of \$107,500.00, bearing interest not to exceed the rate of four per cent. per annum, for the purpose of refunding the following described indebtedness of the Territory of Dakota, to-wit:

\$77,500.00 five per cent. bonds, dated May 1st, 1883., issued for the construction of the west wing of the Insane Hospital at Yankton and \$30,000.00 six per cent. bonds, dated May 1st, 1883, issued for permanent improvements of Dakota Penitentiary at Sioux Falls, such refunding bonds, if issued, to run for not more than twenty years, and shall be executed by the Governor and Treasurer of the Territory, and shall be attested by the Secretary under the great seal of the Territory.

In case such bonds are issued by the Territorial Treasurer as hereinbefore set forth, before the first day of October, 1889, then upon admission of South Dakota as a State it shall assume and pay said bonds in lieu of the aforesaid Territorial indebtedness.

Mr. Edgerton, of Davison: Mr. President; I move the adoption of the resolution.

A Delegate: I second the motion.

The President, pro tem: Gentlemen of the Convention, it is moved that the resolution just read be adopted. Those who are of the opinion that the resolution be adopted, say aye; contrary, say no. The ayes have it and the motion prevails.

The President resumed the chair.

The President of the Convention: Reading of the Journal.

Mr. Price, of Hyde: Mr. President; I move that the reading of the Journal be dispensed with.

The President of the Convention: In the absence of objection, it will be so ordered.

Mr. Price, of Hyde: Mr. President; I have here a resolution which I ask the unanimous consent of this Convention to introduce at this time, and, as it is a matter in which the President of this Convention may have some delicacy in putting the question to the Convention, I will put it myself:

RESOLVED, That for the conspicuously able and impartial

manner in which he has presided over the deliberations of this Constitutional Convention and for his uniformly honorable and courteous treatment of the members and officers composing it, the Hon. A. J. Edgerton has the sincere thanks of this Convention; that the conspicuous part borne by him in securing the admission of South Dakota into the Union of States and the invaluable services rendered by him in framing the fundamental law of the new State, has inseparably linked his name with the history of the new commonwealth of South Dakota, and as a testimonial of our regard for him, he is hereby presented with the gavel which he has wielded with such dignity and fairness during the sessions of this Convention, and we cherish the hope that he may live many years to enjoy the rights and privileges of a citizen of the new State of South Dakota.

Mr. Clough, of Codington: I move its adoption.

Chorus of Delegates: "Second the motion—second the resolution".

Mr. Price of Hyde: It is moved and supported gentlemen, that the resolution just read be adopted. All those in favor of the adoption of the resolution will rise.

Mr. Price, of Hyde: It is unanimously adopted.

The President of the Convention: I cannot express to the delegates of this Convention upon the present occasion, the profound gratitude that I feel at this renewed expression of the members of this Constitutional Convention, for my effort on behalf of South Dakota.

If anything has been accomplished, gentlemen, to merit the approbation of the people, it is due to you, more than to me. I do believe that we can present to the people of South Dakota, when we go home, the best Constitution that was ever submitted to any people. I believe that they will be satisfied with our work, for in every single particular, from the Preamble to the closing sections of the Schedule, the rights and interests of the people have been sacredly guarded. We have guarded their school fund, so that in the years to come that most magnificent fund will educate every poor man's child, throughout the length and breadth of South Dakota. We have guarded their rights so that the Legislature cannot encroach upon them, and it has been the constant effort of every member of the Constitutional Convention to so frame a Constitution that the poorest man in the commonwealth will be equal to the richest, so far as the protection of his rights before the Courts is concerned. And, if I have been enabled to direct,

in the least, in the presentation to the people of this commonwealth of this organic law, I am grateful for it.

I shall long remember—as long as I live—this Constitutional Convention. While sometimes we have had closely contested questions, while issues may have been well defined, the members of this Convention have been so far removed from those passions that sometimes actuate bodies of this kind that after the issue has been settled things have proceeded in an orderly and intelligent manner, without leaving, so far as has been apparent; and so far as I believe, any rancor in the breast of any man.

I thank you; I thank you sincerely, gentlemen, for this expression of your confidence. (Great applause.)

I would say to the members of the Convention that unless it is otherwise ordered, I shall in a short time direct the Clerk to read the Constitution; that is, by the titles of separate articles simply, and then ask that a vote of the ayes and noes be taken upon its final adoption. After that has been done, we will sign it in the order the roll will be called, the members coming forward, as their names are called, to the Clerk's desk, and signing the Constitution. I say, unless it is otherwise ordered by the Convention, that will be considered by me as the will of the Convention. It may take half-an-hour to complete the enrolling of the Constitution. If there is any other business before the Convention, now is the time to bring it up.

Mr. Davies, of Edmunds: Mr. Chairman; I will make a report on behalf of the Committee appointed to secure the publication and distribution of the Constitution, and will state that the Committee has been at work as expeditiously as circumstances would warrant, and that the work will be pushed to completion as fast as the circumstances will permit.

The President of the Convention: Possibly someone in the Convention may be able to give the delegates some information with reference to a very important question—settlement of our accounts with the Secretary.

Mr. Huntley, of Jerauld: Mr. President; by arrangement, the Secretary is to be here this afternoon, in the room adjoining, where he will meet with the members and settle their accounts.

In regard to the amount of money in the "treasury", the Committee is not informed fully with regard to the expenses that have been made, but covering all other matters, by the reckoning of

the Committee, and lumping the incidental expenses at \$1000., there is \$18,821.20 to come out of the Congressional appropriation. This does not include the expense for clerks, and other matters not mentioned in the Omnibus Bill.

The President of the Convention: What is the further pleasure of the Convention?

Mr. Hole, of Beadle: Mr. President; it has been, I think, universally conceded that there was an omission in Section 2 of the report of the Committee on Public Indebtedness, and I ask unanimous consent to have a provision added. The report provides that the debt shall be \$100,000, but it makes no provision for funding the Territorial indebtedness; and I would ask unanimous consent to add this, at the end of Section 2.

"Provided, however; the state of South Dakota shall have the power to refund the Territorial debt by the State of South Dakota assumed, in bonds of the state of South Dakota."

Of course if there is an objection to this, it falls. It seems to be absolutely necessary to put it there, in order to give us power to fund the debt as it matures.

The President of the Convention: Is there any objection?

Is the Convention ready for the question?

As many as are in favor of its adoption, will say Aye; those of a contrary opinion, will say no.

The ayes have it and the resolution is adopted.

Mr. Price, of Hyde: Mr. President; I have a resolution which I send up and ask that it be read.

The resolution was read as follows:

"Resolved, That the thanks of this Convention are hereby tendered to Rev. F. A. Burick, Chief Clerk; Dr. A. W. Hyde, Enrolling and Engrossing Clerk; J. A. Wakefield, Chaplain; James Carney, Sergeant-at-Arms; E. C. Warner, Watchman; F. Höppin, Messenger; Col. I. W. Goodner and T. G. Brown, Stenographers; and Albert Keith, Charley Walts and Frank Clough, Pages; for the faithful and able manner in which they have discharged the duties of their respective positions."

Mr. Price, of Hyde: Mr. President, I move the adoption of the resolution.

A Delegate: I second the motion.

The President of the Convention: You have heard the motion. Are you ready for the question?

As many as are in favor of its adoption will say aye; those opposed, no.

The ayes have it and the resolution is adopted.

Mr. Young, of Lake: Mr. Chairman; I have a resolution which I send to the Clerk's desk to be read.

The resolution, which provides for the allowance of mileage to certain clerks and the watchman and messenger, was read by the Clerk, but, on account of some slight confusion in the hall, the reading was inaudible to the reporter.

The President of the Convention: Is that to come from the United States, or the State?

Mr. Young, of Lake: From the State.

The President of the Convention: If it comes from the State, our rules provide just how to reach it. The rules provide that all such accounts must be presented to the Committee on Expenses and be by that Committee audited and then go to the Convention. If it is desirable, however, I will put the motion.

As many as are of opinion that the motion prevail, will say aye, those of a contrary opinion, say no.

The ayes appear to have it.

(Division called for.)

The President of the Convention: As many as are of opinion that the motion prevail, will rise and stand to be counted. Be seated. As many as are of the contrary opinion, will rise and stand to be counted. Be seated.

The motion is lost.

Mr. Caldwell, of Minnehaha: Mr. President; I desire to state to the members of the Convention that arrangements are being made for holding a reception in this room this evening, by the citizens of Sioux Falls, to the members of the Convention, officers, and so forth, and their ladies, and a formal invitation will be distributed soon, but I make this announcement now in order that if any should miss an invitation, they will understand that it is extended, nevertheless.

Mr. Willis, of Aorora: Gentlemen of the Convention, we have finished our work as a Constitutional Convention—as a body—and we have a matter now of a personal nature that we wish to perform before we leave. Will Brother Jolley please come forward? It is the unanimous desire of the Convention that Mr. Jolley perform this agreeable work and duty and pleasure, in the name and on the behalf of the Convention.

Mr. Jolley, of Clay: Mr. President; the closing hours of this

Convention have almost arrived. Nearly five weeks ago we assembled here in this hall, many of us strangers to each other, and here we have met and worked together during these weeks. We are just as other men are throughout this whole Territory and throughout this whole Western country—men of strong convictions, decided opinions, but having charity for those who differ from us. During the heat and excitement that has at times prevailed here in this Convention, men have stood by their opinions as firmly as men ever stood; they maintained their opinions by the logic of reason, by argument and appealing to the sympathies of the members of the Convention; but, during the whole Convention, no matter how warm our feelings, no matter how hot the debate ran, there has been no unkind word said. We will leave this hall with no unkind feelings in our breasts. We met strangers; we part as friends. And as the years go by, when these scenes that have been enacted in this chamber shall be brought back to our memories, we will remember each person who took part; those who fought us the hardest we will respect the most; those who stood by us we will respect as men who entertained the same opinions as ourselves; but, one and all, of both parties, look upon each other as friends, and when we meet in the future years, we will meet perhaps as brothers.

It is true, Sir, when this Convention met there was some feeling about who should preside over its deliberations. We all "want office", in our way, and he who says that he has no respect for the endorsement of his fellow-men, obtained in a fair manner, without resorting to tricks or subterfuges, but in a fair, open fight, is a man without heart of feelings; he is a man that this Western country knows not of. Hypocrites may cant and those who want office may smile their spurnings and say "we don't want it", still, in man's heart of hearts there is a satisfaction in the endorsement of our fellow citizens that brings gratification to ourselves and pride to our friends. A life well-spent is a noble thing, and to be endorsed by one's friends is a man's pride. Coming here in this manner and prompted by such feelings as those which characterize the delegates who have assembled here, after the little effervescence has been wiped away, when you, Sir, were elected as the President it recorded with the heart and the wishes of every member of this Convention; and now while you have won our respect and our regard, on account of the place you have filled with such honor to

yourself and credit to the State, but Sir, at the close of this Convention we cannot only say that you have won our respect and our regard, but that you have won our hearts, too.

Then, Sir, in behalf of the members of this Convention, I present to you this portrait of each member of this Convention. Take it home; and when you look at the features remember that each is a friend; as you look upon their features remember that you met many of them as strangers, but that so long as life shall last, you shall be, as you are now, their friend. In the heat of a political fight friendships are sometimes wrecked,—friends are separated who have been linked together for many years; but remember, Sir, that up to this time and for your acts in this Convention, no matter, I say, what may happen in the future, you part with us now with our respect and sincere wishes and earnest prayers for your future health and prosperity. (Great applause).

The President of the Convention: Surprises come thick and fast. Four years ago I met in this hall the delegates who were sent up from the different constituencies of South Dakota to frame a Constitution. We met strangers. When I was then selected, without any solicitation on my part, to be the presiding officer of that Convention, it is with pride, perhaps with egotism, that I say I received the unanimous vote of that Convention, Democrat and Republican alike. Four years have succeeded, and with them a battle and struggle such as I have never witnessed in civil life before, for the division and admission of Dakota. We met again and by the same vote, the unanimous vote of the Democrats and Republicans alike, I was selected as your presiding officer—the highest I have ever filled, the highest office I ever expect to fill. To be a delegate in a Constitutional Convention establishing the fundamental law of the State of South Dakota, ought to fill the ambition of any reasonable man's heart; to be twice made the presiding officer of such a body, is an honor which is greater than that of any other office I ever have or ever will be called upon to fill. If I have succeeded in doing my duty here amid the active struggles of the Convention, so as to meet the approbation alike of all men, I have done more than I expected. I only expected, and I only assured you when I took that chair, that as far as in me lay, that I would discharge these duties impartially and to the best of my ability. If I have succeeded so that at the closing hours of this Convention you say to me you are satisfied that I have

endeavored to perform these duties well, I say it more than fills the measure of my ambition.

I thank you! I shall long remember the persons whose portraits are engraved upon this picture. I shall consider it beyond price and I hope to transmit it to my children with the same love and affection for each and every member of this Convention that I entertain for it. I sincerely thank you for this renewed expression of your kindness and affection. (Great applause).

Mr. Caldwell of Minnehaha: Mr. President: I hold here the official copy of the proceedings of the Joint Commission at Bismarck, and I suppose of course that the proper thing will be to include this record with the records of this Convention. I had hoped that Major Kellam, the Chairman of the South Dakota Committee would be here, but he is not at present, and I desire on behalf of the Committee to turn this over to the custody of the Convention.

The President of the Convention: What will the Convention do with the records of the Joint Commission.

Mr. Wescott, of Deuel: Mr. Chairman: I move it be deposited with the President of the Convention, by him to be deposited with the Secretary of State upon the admission of South Dakota into the Union.

A Delegate: I second the motion.

The President of the Convention: Is the Convention ready for the question? You have heard the motion. As many as are of opinion that the motion prevail, say aye; those of a contrary opinion, say no.

The ayes have it.

So the motion prevails.

Mr. Caldwell, of Minnehaha: I desire to state also in that connection that with these minutes there is also included a list of the books at this time in the Territorial library. We took the precaution to take that list, in order that there might be no question arise as to whether we got all the books we bought, not that any of us felt any apprehension there would be any of the books taken away, but it would certainly be documentary evidence to any person who might in the future think any such thing; and I suppose this will go over also with that record.

Mr. Hole, of Beadle: Mr. President: if I understand the condition of the business, it will probably be in order to adopt the

Constitution now, as a whole, if we have reached that stage, and I think we have.

The President of the Convention: Judge Corson can better inform the Convention as to that than I can. It was not ready a few moments ago.

I will state to the delegates that I have asked the Clerk of the Secretary (of the Territory) if he can come into the Committee room to settle with the delegates, and if he can, it will be more convenient for you and for him.

Possibly someone can inform us when the bound volume of the Constitution will be present—about how long before it will be ready.

Mr. Corson, of Lawrence: It will be here, Mr. President, in about five minutes.

The President of the Convention: The Convention may be informally at recess until called to order at the sound of the gavel.
RECESS.

The Convention came to order at 4 o'clock P. M., President Edgerton in the Chair.

The enrolled copy of the Constitution having been received from the Committee, the same was read by the Clerk, by title.

Mr. Kellam, of Brule: Mr. President; I offer the following resolution:

(Reading) RESOLVED, That the Constitution having been considered and acted upon Article by Article, the same be now passed, adopted and confirmed as a whole.

The resolution being put to vote, and there being 72 ayes and no noes, the same was declared adopted.

Thereupon, the roll being called, each member, as his name was called, came forward and signed the Constitution.

On the motion of Mr. Kellam, of Brule, it was ordered that the four stars, representing the States of North Dakota, South Dakota, Montana and Washington, upon the walls of the Convention hall, be left with Mr. Caldwell to be placed in the hall of the future State house.

A recess was taken until 4:30 o'clock P. M.

RECESS.

Four-thirty o'clock P. M.

Convention called to order with President Edgerton in the chair.

Mr. Fellows, of Aurora: Mr. President; I understand the disbursing officer, the representative of Secretary Richardson, is raising a question as to the mileage of the members of this Convention. Now, the Committee on Expenses of this Convention have figured up the mileage of all the members, and that report I understand he is not willing to accept, and now, to bring the matter to his attention in a proper way, I move you that the Chair appoint a committee of three members of this Convention to visit the officer disbursing the funds and try to get him to accept the report of the Committee.

A Delegate: I second the motion.

Mr. Peck, of Hamlin: Make it the action of this Convention, and then send it to him by a committee of three.

Mr. Fellows, of Aurora: And in that connection, Mr. President, I move you that we adopt the report of the Committee on Mileage.

The President of the Convention: We can't adopt it until we have it here.

As many as are of opinion that the resolution be adopted, say aye; opposed, no.

The ayes have it.

So the resolution is adopted.

I will appoint on that Committee, Mr. Caldwell, Mr. Van Buskirk and Mr. Price.

Mr. Fellows, of Aurora: Mr. President; I think we will be able to report that mileage matter to the Convention in a few moments, and I think the Convention ought to adopt it.

Mr. Van Tassel, of Sanborn: Mr. Chairman; I offer the following resolution and move its adoption:

RESOLVED, That the thanks of this Convention be extended to Assistant Secretary Hubbard, for his kind attention to the members of this Convention.

The President of the Convention: Well, he is not Assistant Secretary.

Mr. Van Tassel, of Sanborn: Well, representative of the Secretary.

The President of the Convention: It is moved that the thanks of the Convention be extended to Mr. Hubbard for his kindness and attention to the members of this Convention since the Con-

vention convened. As many as are of the opinion that the motion prevail, say aye; those of a contrary opinion, say no.

The ayes have it.

So the resolution is adopted.

Mr. Anderson, of Hand, called to the chair.

Mr. Edgerton, of Davison: Mr. President; I offer the following resolution and move its adoption:

RESOLVED, That the Committee authorized by the Convention to publish the debates, secure the publication of the same at the earliest possible time when the funds can be secured, either from the United States or the State, and that the published debates be distributed the same as the Journals.

A Delegate: I second the motion.

The President, pro tem: The gentleman from Davison offers the resolution read in your hearing and moves its adoption. Are you ready for the question?

As many as are in favor of the motion will say aye; those opposed, say no.

The motion prevails and the resolution is adopted.

President Edgerton resumed the chair.

Mr. Van Tassel, of Sanborn: Mr. President; I move a reconsideration of the motion that when the Convention adjourn today it adjourn sine die.

The President of the Convention: I presume this motion is made with the thought that in case some other obstacle should arise to prevent our being paid today, we may need to have a session tomorrow.

A Delegate: I second the motion, Mr. President.

The President of the Convention: As many as are in favor of the motion will say aye; those of a contrary opinion will say no.

The ayes have it and the motion is reconsidered.

Mr. Van Tassel, of Sanborn: Mr. President; I move you that the further consideration of the motion pending, which is that when this Convention adjourn it adjourn sine die, be postponed until seven o'clock this evening.

A Delegate: I second the motion.

The President of the Convention: It has been moved that the further consideration of this motion be postponed until seven o'clock this evening. As many as are of the opinion that the

motion prevail, will say aye; those of a contrary opinion, will say no.

The ayes have it.

So the motion prevails.

Mr. Price of Hyde: Mr. President; I desire to state that the Committee appointed to confer with the disbursing officer, has seen him, or a majority of the Committee has seen him, and we have this to report:

That there are some discrepancies in the amount of mileage for the delegates, and he is now engaged in preparing a pay-roll and refiguring the mileage of the different members, and he announces to us that he will not get the pay-roll ready before six o'clock, and we have requested him to compare that with the one prepared by the Expense Committee, and then check where there is any difference, and at that time we will go over them with him.

Mr. Van Eps, of Minnehaha: Mr. President; I move that when this Convention adjourns until seven o'clock they meet in the rooms below, in order that the citizens may have the opportunity to prepare this room for the banquet this evening.

A Voice: Second the motion.

The President of the Convention: It has been moved that the Convention reassemble this evening, when we meet at seven o'clock, in the rooms below. Is the Convention ready for the question?

As many as are of the opinion that the motion prevail, will say aye; opposed, no.

The ayes have it.

So the motion prevails.

Mr. Huntley, of Jerauld: Mr. President; your Committee on Expenses make the following report:

It is suggested by a member of the Committee that we request the privilege of receiving this report again, that we may make a correct copy, free from these marginal notations made for the benefit of members merely.

The President of the Convention: What will the Convention do with the report?

A Voice: Move it be adopted.

Mr. Van Tassel, of Sanborn: I move you, Sir, that in the matter of C. A. Anderson, Clerk of the Committee on Apportionment, the amount be changed from \$110 to \$125. He was paid

\$125 by the Secretary—three days more than is allowed by the Committee.

The President of the Convention: If he has been paid, why is it brought in here?

Mr. Huntley, of Jerauld: Mr. President; I will say that Mr. Hubbard appeared before the Committee and gave an explanation. It appears that he paid some of these clerks before he knew that he had not authority to do so. He came before the Committee and asked that the Committee recommend to the Convention that he receive vouchers for the amount that he paid to these men and that the balance be paid to them. The Committee were willing enough to make such recommendation. If it has not been inserted there—if I remember rightly some action was taken by the Committee, but it was all done in a hurry and it has escaped the record, but the Committee did recommend that Mr. Hubbard receive vouchers for the amount that he paid, and the memorandum of it is in the hands of the Committee.

The President of the Convention: The Committee report \$110 in the case of Mr. Anderson?

Mr. Huntley, of Jerauld: And that is the amount that Mr. Hubbard paid Mr. Anderson.

Mr. Van Tassel, of Sanborn: Then I withdraw my motion. I thought he paid him \$125.

The President of the Convention: Does the Committee recommend that these vouchers shall be paid to Mr. Hubbard?

Mr. Huntley, of Jerauld: Yes, Sir; vouchers of \$110. paid to Mr. Anderson; and that \$95. out of the \$140 for Mr. Hannett, and \$75 out of the \$140 for Mr. Deitz, be paid to Mr. Hubbard, and the balance go to these parites.

The President of the Convention: Then the recommendation of the Committee is that those accounts be divided and separate vouchers be issued?

Mr. Huntley, of Jerauld: Yes, Sir; and I would ask leave to add to our report this bill handed in by Mr. Hubbard for the amounts he paid these clerks. We designed to incorporate it, but in our haste in writing it up we omitted to do so.

The bill of Mr. Hubbard referred to, was here sent to the desk and read.

The President of the Convention: Do I understand the Com-

mittee to recommend that this voucher to Mr. Anderson be delivered to Mr. Hubbard?

Mr. Huntley, of Jerauld: That is the request, and that the amounts named in the bill of Mr. Hubbard there—that these vouchers be issued to go to him, and the balance of the amounts to Mr. Deitz and Mr. Hannett.

The President of the Convention: I think it would be a little better, and it would not involve the two officers that sign these vouchers, if the Committee themselves had recommended this in their report.

Mr. Huntley, of Jerauld: Motion was made in the Committee to do so, but in writing up the work after action had been taken, it was inadvertently omitted.

The President of the Convention: Correct the inadvertence then, so that the President of the Convention and the Chief Clerk will have no difficulty in determining just what the exact will of the Convention is.

Those of the opinion that the report of the Committee be adopted, say aye; those of a contrary opinion, say no.

The ayes have it and the report is adopted, with the understanding that the Chairman of the Committee may make corrections.

A Delegate: I move we take a recess until seven o'clock this evening.

A Voice: I second the motion.

The President of the Convention: It is moved that the Convention take a recess until seven o'clock this evening. Those of the opinion that the motion prevail, say aye; contrary, no.

The ayes have it and the Convention will stand in recess until seven o'clock, when we will meet in the rooms below.

RECESS.

Seven o'clock, P. M.

The Convention was called to order in the lower rooms.

President Edgerton presiding.

There being no further business before the Convention, save the settlement of accounts of members, a recess was taken until nine o'clock.

RECESS.

Nine o'clock, P. M.

The Convention was called to order, President Edgerton, presiding.

On motion of Mr. Jolley, of Clay, the Constitutional Convention of South Dakota, adjourned, sine die.

ADJOURNED.

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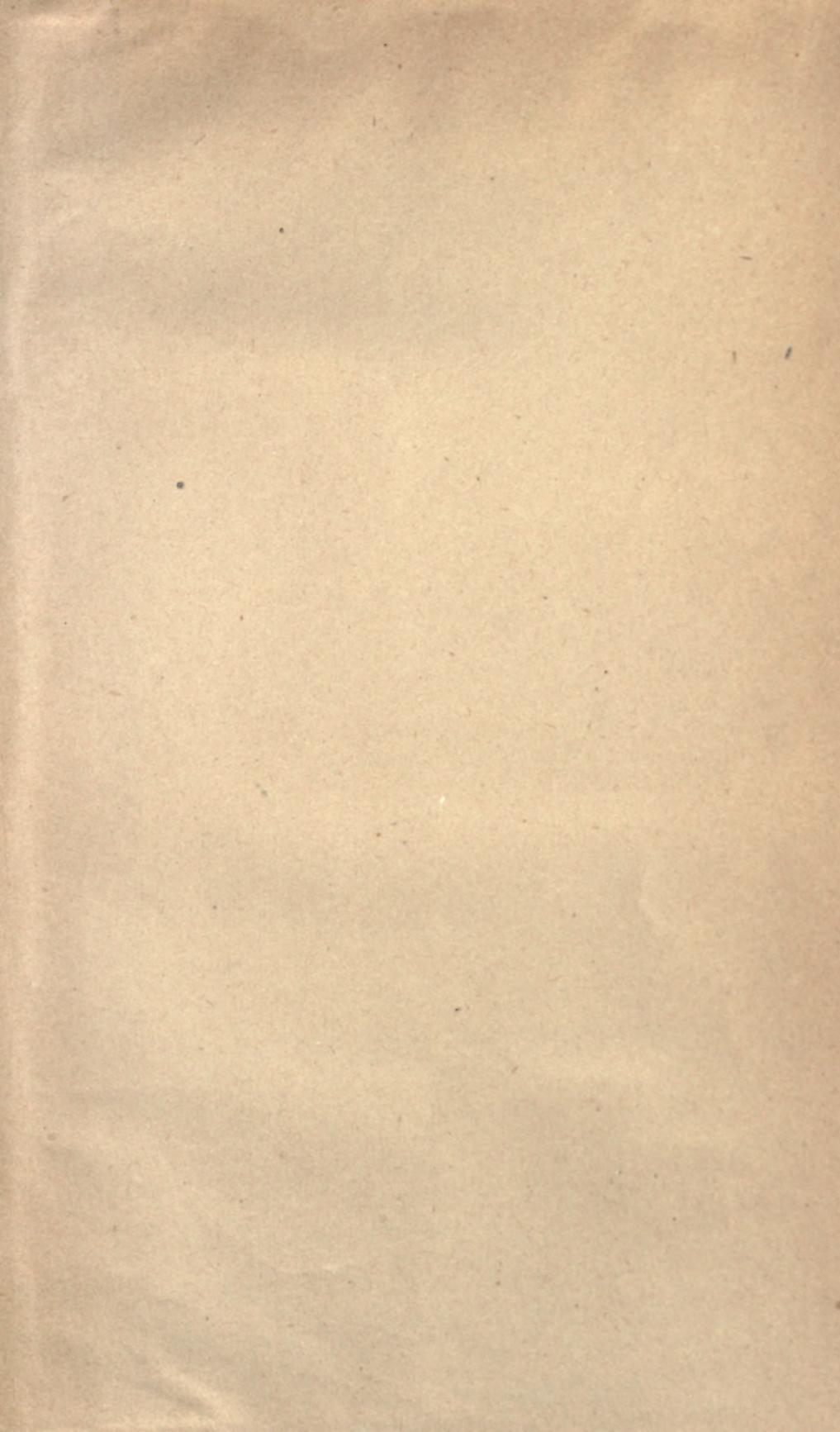
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